





THE RULES AND ORDERS

OF THE

High Court of Judicature at Fort William in Bengal
(ORIGINAL SIDE)

WITH

*An Abstract from the Supreme Court Charter Act (13 Geo. III, c. 63);
The Supreme Court Charter of 1774; Statute 21 Geo. III, c. 70;
The High Courts Charter Act (24 & 25 Vict., c. 104);
Abstract of the Letters Patent of 1862;
Proclamation of 22nd November 1865;
Notification of 2nd April 1866;
The Letters Patent of 1865;
Appendices of Forms; The Admiralty Rules; Insolvency Rules; etc.*

AND A

COMPARATIVE TABLE

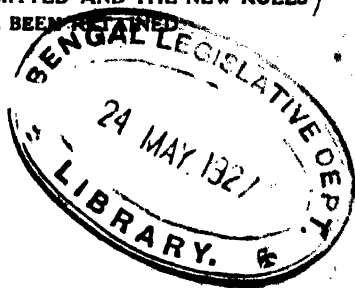
SHOWING WHICH OF THE OLD RULES HAVE BEEN OMITTED AND THE NEW RULES
CORRESPONDING TO THOSE WHICH HAVE BEEN RETAINED

WITH NOTES

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PREFACE.

MR. BELCHAMBERS, the late Registrar, Original Side, in his well known compilation of the Rules and Orders, inserted abstracts of the Supreme Court Charter 14 Geo. III; the Letters Patent of 1862; 28 & 29 Vict., c. 15; and set out in full 24 and 25 Vict., c. 104 (An Act for Establishing High Courts); Proclamation, No. 4366 of 22nd November 1865, continuing the jurisdiction formerly exercised by the Supreme Court; and the Letters Patent of 1865. The insertion of these having been of such great general use, it has been thought desirable, in the present publication, not only to continue but to amplify them.

From the preface to Smoult & Ryan's book of the Rules and Orders of the Supreme Court published in 1839, of which book there are very few copies now in existence, it appears that the *Charter of the 43rd Elizabeth* to the first East India Company, and the subsequent Charters previous to that of the 13th Charles II, contained no provisions for the administration of justice in India, except for the government of the Company itself.

The *Charter of the 13th Charles II* empowered the then Company to appoint Governors and other officers to govern their plantations, forts, fortifications, factories or colonies, and the Governor and his Council were empowered to judge all persons, belonging to the said Governor and Company or that should live under them, in all causes whether civil or criminal, according to the laws of the kingdom, and to execute judgment accordingly.

By the *35th Charles II* the Company were empowered to erect Courts of Judicature "consisting of a person learned in the Civil laws and two merchants, who were to decide according to equity and good conscience, and according to the law and customs of merchants;" and similar provisions were contained in the subsequent Charters down to the period of the union of the old and new Companies.

The *first Charter granted to the United Company* was that of the 13th Geo. I in 1726, by which at each of the

settlements of Madras, Bombay and Calcutta, a Mayor and 9 Aldermen were appointed and they were thereby constituted a Court of Record by the name of the Mayor's Court "to try, hear and determine all Civil Suits, Actions and Pleas, between party and party, that shall or may arise or happen, or that have already arisen or happened, within the said towns, or within any of the factories subject or subordinate thereto."

A Sheriff was appointed for the towns and districts aforesaid and for any space within 10 miles of the same, and the Mayor's Courts were directed to try complaints made in writing against any person "then residing or being or who at the time when the cause of action did or should accrue, did or should reside within the said Forts or towns or the aforesaid precincts, Districts or territories thereof."

An appeal was given to the Governor and Council, whose decision was to be final in all suits under 1,000 pagodas, and if above that sum an appeal lay to the King in Council.

The Governor and the 5 Senior of the Council were appointed Justices of the Peace, with the same or the like powers as Justices of the Peace constituted by any Commission or Letters Patent in England; with power to hold Quarter Sessions of the Peace; and they were constituted a Court of Record in the nature of a Court of Oyer and Terminer and Gaol Delivery for the trial of all offences (high treason excepted) committed within the said towns or within any of the factories subordinate thereto or within 10 miles of the same.

The Mayor's Courts were also empowered to grant probate of Wills and Letters of administration "as touching the debts and estate" of the Testator or Intestate "within the limits of Trade granted to the said Company."

"The town of Madras having surrendered in September 1746, to the forces under Labourdonnais, the Mayor's Court ceased to exist. Its members were dispersed, and the Corporation was considered to have been dissolved. The town having been restored to the English in August 1749, by the treaty of Aix la Chapelle, the East India Company by indenture, dated the 6th of January, 1753, surrendered to George the Second the letters patent, which had been granted to them in the 13th year of the reign of the late King, and also other letters patent, which they

had obtained in the first year of the reign of the then Sovereign, extending the powers of those which they had received from his predecessors. On the surrender of these grants, the Company obtained letters patent, dated the 8th January, 1753." (Clarke's Rs. and Os., Preface to 5th Ed.)

By this *Charter of 26th Geo. II, 1753* the Mayor's Courts, the Courts of Quarter Sessions and of Oyer and Terminer and Gaol Delivery were re-established in the three settlements with the same powers as in the former Charter, except that, with regard to the Mayor's Courts they were not to try suits or actions between the Indian natives, such actions being left to be determined among themselves unless both parties by consent submitted the same for the determination of the Mayor's Courts; and the Criminal jurisdiction of the Courts of Oyer and Terminer and Gaol Delivery was stated to be for the trial of offences (high treason excepted) committed within the said Towns or within any of the said factories or places subordinate thereto; the words "or within 10 miles of the same" being omitted.

A Court of Requests was also established for the determination of suits where the debt or matter in dispute did not exceed the value of 5 pagodas.

In 1773 the Committee of Secrecy appointed to enquire into the state of the East India Company made its report.

That report detailed the state of the country judicatures throughout the province of Bengal, as they subsisted under the ancient constitution of the country, or as they had been affected or altered by the Company; and the state of judicature existing in the settlement of Calcutta and in the factories and districts depending upon it, partly derived from the constitution of the country and partly established by Charters of Justice. (Smoult & Ryan, Preface, p. iii.)

With reference to the former (*i.e.*, the Courts established by the Mahomedan Government) the committee reported that "so far as they were able to judge from all the information laid before them, the subjects of the Mogal Empire in that province derived little protection or security from any of these Courts; and that in general, though forms of judicature were established and preserved, the despotic principles of the Government rendered them the

instruments of power rather than of justice; not only unavailing to protect the people, but often the means of the most grievous oppressions under the cloak of the judicial character." (Cowell's Tagore Lectures, 1872, p. 42.)

With regard to the Mayor's Court the Committee remarked that "although it is bound to judge, at least where Europeans are concerned, according to the laws of England, yet the Judges are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide; and that the Judges were justly sensible of their own deficiency; and that they had therefore frequently applied to the Court of Directors, to lay particular points respecting their jurisdiction before Counsel, and to transmit the opinion of such Counsel, to be the guide of their conduct. (Smoult & Ryan, Preface, p. iii.)

This report led to the passing of "*the Regulating Act*" 13 Geo. III, c. 63, an Act "for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe." (1)

This Act empowered His Majesty to establish a *Supreme Court* at Calcutta, which Court was accordingly constituted by the *Charter of 26th March 1774*.

The necessary portions of 13 Geo. III, c. 63 as contained in Smoult & Ryan, and the *Charter of 1774* in full are (with notes) set out *post*, pp. 1 to 47.

In 1800 by 39 & 40 Geo. III, c. 79, His Majesty was empowered to establish a *Supreme Court* at Madras, which Court was accordingly constituted by Charter dated 26th December 1800.

By 4 of Geo. IV, c. 71, His Majesty was empowered to establish a *Supreme Court at Bombay* which Court was accordingly constituted by Charter dated 8th December 1823.

By Clause 36 of the *Charter of 1774* the Mayor's Court and the Court of Oyer and Terminer and Gaol Delivery established by the *Charter of 1753* were abolished; all proceedings pending therein were transferred to the *Supreme Court*, and all records, muniments and proceedings were

(1) By section 38 it was enacted that the Judges of the *Supreme Court* should be Justices of the Peace.

directed to be delivered over, deposited and preserved⁽¹⁾ among the records of the Supreme Court.

The Court of Requests and Court of Quarter Sessions were by cl. 21 made subject to the control of the Supreme Court.

The jurisdiction of the Court of Requests was extended by proclamations of the Governor General in Council issued under 39 & 40 Geo. III, c. 79 first to Rs. 100, then to Rs. 250, then to Rs. 400: (See Smoult & Ryan, Appendix, pp. XI to XXI.)⁽²⁾

The Court of Quarter Sessions does not appear to have sat very frequently, and then not for the purpose of exercising any criminal jurisdiction, but only for the purpose of assessment of property. (See charge to the Jury by Mr. Justice Ryan, 13th April 1829, and opinion of Mr. Advocate General Spankie, dated 15th May 1819. Appendix to Smoult & Ryan, pp. XXXI & XCIII.)

The powers and duties of this Court seem to have been superseded, as to criminal work by the Magistrates' Courts, and as to assessment of property by the Municipality.

Shortly after the grant of the Supreme Court Charter unfortunate contentions arose between the Governor General in Council and the Judges of the Supreme Court (see Morley's Administration of Justice in India and Cowell's Tagore Law Lectures, 1872) which resulted in the passing of the *Act of 1781* (21 Geo. III, c. 70).⁽³⁾

By that Act it was *inter alia* declared that the Supreme Court had no jurisdiction over the Governor General and Council for any act or order made or done by them in their public capacity; that persons (other than British Subjects) impleaded in the Supreme Court for acts done by order of the Governor General might plead the general issue and give the order in evidence which should amount to a sufficient justification: "that the Supreme Court should have no jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof according to the usage and practice of the country, or the Regulations of the Governor General and Council; that no persons should be subject to the jurisdiction of the

(1) See Destruction of Records Act (III of 1879) and Rules thereunder Ch. XXXVIII, *post*, p. 482.

(2) Court of Requests abolished by Act IX of 1850 and S. C. Ct. established, see note to cl. 21 of Charter of Supreme Court, *post*, p. 34.

(3) Set out, *post*, p. 49.

Court by reason of being a landowner, land-holder, or farmer of land or of land-rent; that no person should be so subject to the jurisdiction of the said Court by reason of his being employed by the Company or by the Governor General and Council, or on account of his being employed by a native of Great Britain, in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses, and also except in civil suits by agreement of parties, in writing, to submit the same to the decision of the said Court. Section 17 of this important Act also reserved their peculiar laws to Hindus and Muhammadans in certain civil matters; and the 24th section provided that no action for wrong or injury should lie in the Supreme Court against any person whatsoever exercising a Judicial office in the Country Courts, for any judgment, decree or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court." (Morley, pp. 11 & 12.)

" But perhaps the most important part of the Act and the one which most completely reversed the policy and intention of the Act of 1773 was the recognition by Parliament of the Civil and Provincial Courts existing independently of the Supreme Courts; and of the Governor General and Council or some Committee thereof as the Chief Appellate Court of the country, and the vesting the Council with the power to frame Regulations for those Provincial Courts independently of the Supreme Court." This was by sections 21 to 23. (Cowell, p. 75.)

" By the *24th Geo. III, c. 25, s. 44*, passed in 1784, all His Majesty's subjects, as well servants of the Company, as others, were declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all criminal offences committed in the territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or peoples, in the same manner as if the same had been committed within the territories directly subject to and under the British Government in India.

" By the 29th section of the *26th Geo. III, c. 57*, all servants of the East India Company, and all His Majesty's subjects resident in India, were made subject to the Courts of Oyer and Terminer and Gaol Delivery, for all criminal

offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade.

“ Section 67 of the *33rd Geo. III, c. 52*, re-enacted section 44 of the *24th Geo. III, c. 25*. Section 156 of the same Statute extended the Admiralty jurisdiction of the Supreme Court at Calcutta given under the Charter; and the Court was empowered, by means of juries of British subjects, to try, according to the laws and customs of the Admiralty of England, all offences committed on the high seas.

“ By the *37th Geo. III, c. 142, s. 1*, the number of Judges of the Supreme Court at Calcutta was limited to three.

“ By sections 99 and 100, of the *53rd Geo. III, c. 155*, all persons whatsoever were authorised to prefer, prosecute, and maintain, in His Majesty's Courts at Calcutta, Madras, and Bombay, all manner of indictments, informations, and suits whatsoever for enforcing the laws and regulations made by the Governor General and Governors in Council, or for any matter or thing whatsoever arising out of the same. The Advocate General at each of the several Presidencies was also empowered to exhibit informations in the said Courts against any person or persons whatsoever for any breach of the revenue-laws or Regulations of any of the said Governments, or for any fines, penalties, forfeitures, debts, or sums of money, committed, incurred, or due by any such person or persons in respect of any such laws or Regulations. Section 107 provided that where, by the Regulations, it would be competent to a party to prefer an appeal to the Court of highest appellate jurisdiction in the provinces, British, subjects residing or trading, or occupying immoveable property within the provinces, should be entitled to prefer, instead of such appeal, an appeal to His Majesty's Courts of Judicature at the several Presidencies. This section, however, was repealed by Act XI of 1836; Section 110 of the same Statute, after stating that doubts had been entertained whether the Admiralty jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay extended to any persons but those amenable to their ordinary jurisdiction, empowered the said Courts to take cognizance of all crimes perpetrated on the high seas, by

any person or persons whatsoever, in as full and ample a manner as any other Court of Admiralty jurisdiction established by His Majesty's authority in any colony or settlement whatsoever belonging to the Crown of the United Kingdom.

"The 4th Geo. IV, c. 71, passed in 1823, authorized the abolition of the Recorder's Court at Bombay, and the establishment of a Supreme Court of Judicature in its stead, to be a Court of Record, to consist of the like number of Judges as the Supreme Court at Fort William in Bengal, who should be barristers of England or Ireland of not less than five years' standing, and to be invested with the same powers and authorities as the said Supreme Court, and to have a similar jurisdiction and the same powers, and to be subject to the same limitations, restrictions, and control.

"The powers of the Supreme Courts at Madras and Bombay were placed upon an equal footing with those of the Supreme Court at Calcutta, in an explicit manner, by the 17th section of this Act, which declared that it should be lawful for the Supreme Court of Judicature at Madras, within Fort St. George, and the town of Madras, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Madras; and for the Supreme Court of Judicature at Bombay, within the town and island of Bombay, and the limits thereof, and the Factories subordinate thereto and the territories subject to or dependent upon the Government of Bombay, and the said Supreme Courts respectively were thereby required, within the same respectively, to do, execute, perform and fulfil, all such acts, authorities, duties, matters, and things whatsoever, as the Supreme Court of Fort William was or might be authorised, empowered, or directed to do, execute, perform, and fulfil, within Fort William in Bengal, or the places subject to or dependent upon the Government thereof. Letters patent, granting a Charter of Justice to the Supreme Court at Bombay, were issued on the 8th of December 1823. (Morley, pp. 12 to 16.)

"It may be remarked, that although by the 4th Geo. IV, c. 71, the Supreme Courts at Madras and Bombay were invested with the same powers as the Supreme Court at Fort William, there was no similar provision in any

Statute in favour of the latter Court, that it should exercise the same powers with the Supreme Courts at the other Presidencies.

“ There were some variations in the Charters of the several Courts, that gave rise to considerable doubt and difficulty, and these may be shortly alluded to. In the first instance, there was a difficulty with regard to the powers which the Justices of the Courts were to possess in the provinces as conservators of the peace.⁽¹⁾ Again the Supreme Court at Bombay was prohibited, by the 30th section of its Charter, from interfering in any matter concerning the revenue, even within the town of Bombay, which was in direct contradiction to the 53rd Geo. III, c. 155, ss. 99, 100. Natives were also exempted from appearing in the Supreme Courts at Madras and Bombay, unless the circumstances were altogether such as that they might be compelled to appear in the same manner in a Native Court : a provision which seemed to place the jurisdiction of the Supreme Courts in such cases entirely at the discretion of the Government, who regulated the Company's Courts as they pleased. This appears to be inconsistent with the duties assigned to the Courts by the Statutes. Lastly, with regard to crimes maritime, the 54th section of the Bombay Charter of Justice restricted the powers of the Supreme Court to such persons as would be amenable to it in its ordinary jurisdiction ; which was again at variance with the 53rd Geo. III, c. 155, s. 110, if the ordinary jurisdiction, as was to be inferred from the other portions of the Charter, were limited to British subjects.

“ By the Statute 9th Geo. IV, c. 74, ss. 7, 8, 9, 56 and 70 provisions were made, without any distinction between Native and British persons, for the trial by the Supreme Courts of accessories before or after the fact to any felony, and of any accessory before or after the fact, after conviction of the principal, though the principal was not attained of such felony ; for the trial of murder or manslaughter, where the death, or the cause of death only, happened within the limits of the East India Company's Charter ; and for the trial of bigamy, whenever the offender was apprehended or found within the jurisdiction of the Courts, although the offence might have been committed elsewhere.” (Morley, pp. 16 to 17.)

(1) As to this see Morley, Chapter II.

“ It would be a difficult task to define exactly the powers and jurisdictions of Her Majesty’s Supreme Courts in India, given by the Statutes and Charters above enumerated and questions were constantly arising on these important subjects, which could only be reduced to certainty by the repeated decisions of the Courts, or by fresh enactments.”

Morley then at p. 18 quotes Sir Charles Grey and Sir Edward Ryan upon the uncertainty of the legislation with respect to the powers and jurisdiction of the Supreme Courts in the following terms :—“ In one way or another,” write the learned Judges, “ sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition, sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something finding its way into the constitution of the new Courts which is essentially different from the old, and would be destructive of their efficiency;—in some or all of these ways the Supreme Courts have come to stand at last in circumstances in which it is a very hard matter to say what are their rights, their duties, or their use.”

Many of the doubts and difficulties thus complained of still existed in 1858 when Morley concluded his remarks on the Supreme Courts by quoting the account of their jurisdiction appended to the First Report of the Commissioners, appointed in 1853 to consider the reform of the Judicial establishments of India.

“ The local jurisdiction of the Supreme Court at Fort William is limited to the town of Calcutta, which for this purpose is bounded on the west side by the river Hooghly, and on the other sides by what is called the Mahratta ditch. Within these limits the Court exercises

all its jurisdictions, civil and criminal, over all persons residing within them, ⁽¹⁾ with the exception of its ecclesiastical jurisdiction, which has not been applied to Hindus and Muhammadans beyond the granting of probates of wills.

“ In like manner the Court exercises all its jurisdiction over all British-born subjects, that is, persons who have been born within the British Islands, and their descendants, who are resident in any of the provinces which are comprehended within the Presidency of Bengal,⁽²⁾ or the subordinate Government of Agra.

“ All persons resident at any places within the said provinces, who have a dwelling house and servants in Calcutta, or a place of business there where they carry on any trade, through their agents or servants, are held to be constructively inhabitants of Calcutta for the purpose of liability to the common law and equity jurisdictions of the Court.

“ Natives of India, within the said provinces, who have bound themselves upon any contract or agreement in writing with any British subjects, where the cause of action exceeds the sum of 500 rupees, to submit to the jurisdiction of the said Court, are subject to its jurisdiction in disputes relating to the said contract.⁽²⁾

“ In like manner, persons who avail themselves of the Court's jurisdiction for any purpose, are held liable to its jurisdiction in the same matter, even on other sides of the Court than that of which they have availed themselves, as, for instance, persons who have applied for and obtained probates of wills, are held liable to the Court's equity jurisdiction for the due administration of the estate.

“ All persons who, at the time of action brought or cause of action accrued, are or have been employed by, or directly or indirectly in the service of the East India Company, or any British subject, are liable to the Civil jurisdiction of the Court in actions for wrongs, or trespasses, and also in any civil suit by agreement of parties in writing to submit to the jurisdiction of the said Court;⁽³⁾ and all persons who, at the time of committing any crime, misdemeanour or oppression are or have been

⁽¹⁾ See Charter cl. 19, *post*, p. 31; 21 Geo. III, c. 70, s. 17; and note thereto.

⁽²⁾ See Charter cl. 13, *post*, p. 31.

⁽³⁾ Charter modified by 31 Geo. III, c. 70, s. 10, *post*, 52.

employed, or directly or indirectly in service as aforesaid are liable to the criminal jurisdiction of the Court.⁽¹⁾

“The Admiralty jurisdiction of the Court extends over the provinces of Bengal, Behar and Orissa, and all other territories and islands adjacent thereto, which, at the date of the Charter, were or ought to be dependent thereon, and comprehends all causes civil and maritime, and all matters and contracts relating to freights, or to extortions, trespasses, injuries and demands whatsoever between merchants or owners of ships and vessels employed or used within the jurisdiction aforesaid or other persons, contracted, done and commenced in or by the sea, public rivers, or creeks, or within the ebbing and flowing of the sea about and throughout the said three provinces and territories.⁽²⁾ The criminal jurisdiction extends to all crimes committed on the high seas by any person or persons whatsoever in as full and ample a manner as any other Court of Admiralty in any colony or settlement belonging to the Crown.⁽³⁾”

“The Supreme Courts at Calcutta, Madras and Bombay have criminal jurisdiction over all British subjects for crimes committed at any place within the limits of the Company’s Charter, that is, any part of Asia, Africa, or America, beyond the Cape of Good Hope, to the Straits of Magellan, or for crimes committed in any of the lands or territories of any Native Prince or State, in the same way as if the same had been committed within the territories subject to the British Government in India.⁽⁴⁾”

“The Supreme Courts at Madras and Bombay have generally the same powers, and their jurisdictions are generally the same within the settlements of Madras and Bombay, as those of the Supreme Courts of Judicature at Fort William within the territories attached to the Presidency of Bengal and sub-presidency of Agra.” (Morley, pp. 18 to 22.)

The history of the judicial institutions in the Mofussil and of the Sudder Dewany and Sudder Nizamut Adawlut which existed at the same time as the Courts of the Presidency Towns will be found in Morley, Cowell and other similar works.

(1) Charter cl. 19, *post*, p. 31.

(2) Charter cl. 26, *post*, p. 33.

(3) Charter explained by 33 Geo. III, c. 52, s. 156; and 53 Geo. III, c. 155, s. 110.

(4) Charter cl. 19; 33 Geo. III, c. 67, s. 29; 33 Geo. III, c. 52, s. 67.

“ The inconveniences of such double system were numerous, but the difference in the procedure observed, and in the laws administered by these rival institutions, as well as the existence of a strong party feeling in favour of maintaining tribunals which should exercise exclusive jurisdiction over Europeans, rendered such system extremely difficult to abolish.

“ With regard to the laws administered, the Courts established by the Crown and Parliament for the most part applied English law, both civil and criminal; exceptions being made in favour of Hindus and Mahomedans, that in suits against parties of either of those religions, by whomsoever they might be brought, whether by Europeans or Natives, the law of the defendant should prevail. Their proceedings also were governed by the English law of procedure. Until 1834, they for the most part were amenable only to the legislative authority of Parliament, and to such Regulations of Government as the Supreme Courts might choose to acknowledge and register.

“ The Mofussil Courts, on the other hand, had nothing to do with English law, but were amenable in all respects to the Regulations of Government, and when Hindu or Mahomedan law did not apply, or when no Regulations were applicable, were directed to proceed according to justice, equity, and good conscience. That is to say, in cases for which no law was provided, the Judges were authorized to use the best discretion they possessed. Originally the number of cases for which no specific law existed, must have been considerable. For, setting aside Hindu and Mahomedan law, there was no law of contract, no law of succession, no territorial law, no law of evidence, no law of administration of deceased estates. The wide field, from which all specific law was absent, was gradually reclaimed, as it were, and brought within the limits of civilization. But the process was very gradual, and until the establishment of the Indian Law Commission and the Imperial Legislature in 1834 could hardly be said even to have commenced.

“ The Procedure of those Courts was such as was from time to time prescribed by the Regulations, which, by the constant process of repeal and amendment, at last gave a very uncertain and obscure expression to the rules which they provided.

“ Before the work of amalgamating these two rival sets of judicial institutions could possibly be proceeded with, it was absolutely necessary to make some attempts to bridge over the wide gulf which separated the laws which they respectively administered, and the procedure which they respectively observed. The abolition of the East India Company, ⁽¹⁾ the assumption of direct responsibility of Government by the English Crown, and the consolidation of the Indian Empire under the Queen, which occurred in 1858, favoured the work of amalgamation which the influences of a century had impeded and prevented. Policy suggested that in re-establishing and consolidating the new empire something more was required than an imperial army, government, and legislature. A uniform criminal law, a uniform system of Courts, of civil and criminal procedure, and in the end of a uniform civil law, so far as exclusive rights to personal laws, based upon religion, would permit, and as far as practicable, equal liability to the jurisdiction, were required as a basis upon which to found a just as well as an imperial administration.

“ In the next three years after the proclamation of the Queen, first the Civil Procedure Code, and then the Criminal Procedure Code, and almost immediately afterwards the Penal Code, all of which had been long in preparation were enacted. They applied to the whole empire, and all Courts were governed by the procedure therein laid down, except the Supreme Courts and those established by Royal Charter.

“ When these Codes had been passed, a very long stride had been made in the direction of one uniform system for the administration of justice in India. The next step was to abolish the Supreme Courts in the three Presidencies and the anomalous procedure observed in them and constitute in each Presidency town a High Court of Judicature which should be supreme over all the Courts both in the Presidency towns and also in the Mofussil. The plan had long been in contemplation, in fact the continued existence of the Supreme Courts alien as they were from the rest of the judicial system, was due to the high character they had maintained and the confidence which was reposed in them by the public and to the diver-

(1) See 21 and 22 Vict., c. 106.

gence in law and procedure to which I have referred, and to the long delays in maturing and passing the three Codes mentioned above.

“ Those three Codes were passed respectively in the years 1859, 1860, and 1861, and in the last of those three years a Bill was introduced into Parliament for the establishment of the High Courts. As far back as 1852-53 in the evidence which was given before the Committee which sat on East Indian affairs, a strong opinion was expressed, by those most competent to give it, that it was desirable with a view to the better administration of justice in India that the Supreme and Sudder Courts should in each Presidency be consolidated into one, so as (in the stereotyped phraseology) to unite the legal training of the English lawyers with the intimate knowledge of the customs, habits, and laws of the Natives possessed by the Judges in the country.

“ When Sir Charles Wood introduced the Bill of 1853, he was anxious to include a provision for effecting that object, and to empower Her Majesty to issue her Charter for the establishment of a United Court. But the members of the India Law Commission, though they approved of the proposed change, thought that it would be useless to attempt to unite the Courts, till the Codes of Procedure were established. A Royal Commission, however, was issued to obtain the basis on which the forms of procedure could be framed.

“ The Act (24 and 25 Vict., c. 104, dated 6th August 1861) ⁽¹⁾ was speedily passed, and by it the Crown was empowered to establish by Letters Patent at Fort William in Bengal a High Court of Judicature for the Bengal Division of the Presidency of Fort William and also by similar Letters Patent High Courts at Madras and Bombay; and it was enacted that upon the establishment of such High Court the Supreme Court and the Court of Sudder Dewany Adawlut and Sudder Nizamut or Foujdary Adawlut should be abolished. The jurisdiction and powers of the High Courts were to be fixed by the Letters Patent. The High Court was empowered to provide for the exercise of its jurisdiction, original and appellate, by one or more Judges or by division Courts constituted by two or more Judges. It was vested with superintendence of all Courts

(1) See post, p. 59.

which might be subject to its appellate jurisdiction, with a general power to issue rules to regulate their practice and proceedings and for the general conduct of their business. The sanction, however, of the Governor General in Council or of the Governor in Council was rendered necessary. The Crown was also empowered to establish a High Court in the North-Western Provinces.

“Thereupon Charters were issued in 1862, and afterwards new Charters in 1865, constituting the High Courts at Bengal, Madras and Bombay.” (Cowell, pp. 224 to 231.)

An abstract of the Letters Patent of 1862 is given *post*, p. 65 and the Letters Patent of 1865 *in extenso* with notes, *post*, p. 75.

Reference may be made to the recent most important decision of the Special Bench in the matter of the *Amrita Bazar Patrika* (17 C. W. N., p. 1253) where the question of the power of the Calcutta High Court to commit for contempt of a Criminal Court in the Mofussil was fully discussed and it was held (I quote from the head note of that report) that neither the Supreme Court nor the Sadder Dewani Adawlut nor the Sadder Nizamut Adawlut had jurisdiction to commit a person for contempt of a Criminal Court in the Mofussil; and that this High Court which had inherited all jurisdictions and every power and authority in any manner vested in the Supreme Court, the Sadder Dewani Adawlut and the Sadder Nizamut Adawlut, has not derived any such jurisdiction from any of these Courts. With reference to the decision in *Rex v. Davies* [L. R. (1906) 1 K. B. 32 (1905)] it was shown that the jurisdiction to commit for contempt of an inferior Court by summary proceeding which the King's Bench Division of the High Court in England assumed in that case had been inherited by it from the old King's Bench and not from the other Courts of record which became amalgamated in the English High Court; and that that jurisdiction rested on the special power of that Court to correct and protect against extra-judicial error and to punish every kind of misdemeanour, on a summary proceeding as well as on indictment or information, as the *custos morum* or the guardian and protector of public justice throughout the Kingdom, a dignity that reverted to it or was revived on the abolition of the Star Chamber; that the Common Law powers as *custos morum* never belonged

to the Supreme Court of Calcutta, at least in regard to contempts of inferior Courts outside the Presidency Town, and the Calcutta High Court cannot lay claim to this power, by inheritance or by reason of its having been constituted by Charter a Court of Record or by reason of its power of superintendence over the Courts of Mofussil Magistrates.

It was further shown that under 13 Geo. III, c. 63, and the Charter of 1774, and subsequent legislation, the criminal jurisdiction of the Supreme Court of Calcutta (apart from Crimes Maritime) was limited to the local limits of that Court, except as to British subjects and that Court had no general power over Mofussil Criminal Courts. The Common Law was similarly limited in its application to the Presidency Town and to British subjects outside its local limits. Further, the Supreme Court possessed no statutory jurisdiction over the Mofussil Magistrates or other Courts of the East India Company except as provided in 53 Geo. III, c. 15, s. 111, and as regards contempts except in relation to such as were committed in the face of such Magistrates or Courts as provided in Act XXX of 1841 and not proceeded against in such Courts. This High Court, however, has in all its jurisdictions, as a Court of record power to commit for any contempt of itself in relation to any of those jurisdictions and the Court on its Original Crown side would have power so to punish any interference with the due administration of justice by a Division Bench in relation to a criminal appeal pending before it amounting to an offence under the Common Law, and might possibly have such power even before any appeal was pending, as for instance where it was shown that witnesses were being deterred from giving evidence or the jury likely to be prejudiced.

With regard to the Statute law it may be of use to quote from Mr. Longueville Clarke's 5th Edition of the Rules of the Supreme Court. Referring to the Charter of 1726 he observes :—

“ It was by this Charter, that all the common and statute law at that time extant in England, was first introduced into the Indian presidencies; and it is to the doctrine which has been applied to this Charter, that the inhabitants of the presidencies have been both injured and

benefited by an exclusion, with some few exceptions, from all the Parliamentary enactments passed since that period.

“ The authority on which the Indian courts have refused to apply the English statutes, which have been enacted, since the granting of the Charter of George the First, and in which their extension to India is not especially declared, is to be found in Calvin’s case, 7, Rep. 1. But Chief Justice East has stated ‘ the rule of law in this case to be merely technical, that its application is doubtful, and that it is difficult to imagine, that the result which has been produced could have been foreseen or intended.’ There have been persons who have questioned some of the doctrines contained in the report of this case, and who have considered, that legal principles had less to do with the decision, than the peculiarities of the case and the politics of the times. It is certain, that when the first James sat on the English throne, more important privileges were conferred on the Scottish emigrants, than they obtained by the decision in Calvin’s case, and that too, by more difficult means than the mere perversion of law; and when in addition to this, we find the learned reporter recording ‘ that it was to the honor of the state that no commandment or message was delivered to the Judges, to incline them to an opinion,’ it excites a suspicion which is at variance with the belief, that the judgment of the Court was altogether devoid of bias. But whether the doctrines in this case, or their application to India, be right or wrong, it will require the interference of Parliament, to alter a practice, which has for half a century received the sanction of so many Judges, Parliamentary authority can confirm the past and fix the future; but mere judicial interference, which of necessity must be opposed to a series of Judicial decisions, would involve both in difficulty and doubt. * * * * *

“ I have already observed, that since 1720, there has been no general extension of British law into India. The various acts of Parliament have only been so many partial additions to the code which was then introduced, while the different Charters of Justice are not to be considered as acts of legislation but only as affording the authority and means for carrying legislation into effect.

"The law which⁽¹⁾ now obtains in the Supreme Court may be classed under seven distinct heads.

"1. The common law as it prevailed in England in 1726, and which has not subsequently been altered by statutes, especially extending to India.

"2. The statute law which prevailed in England in 1726, and which has not subsequently been altered by statutes, especially extending to India.

"3. The statute law expressly extending to India, which has been enacted since 1726, and which has not been repealed.

"4. The civil law, as it obtains in the Ecclesiastical and Admiralty Courts in England.

"5. Regulations made by the Governor General in Council under the 13 Geo. III, c. 63, ss. 36 and 37; 39 and 40 Geo. III, c. 79, s. 18; and 53 Geo. III, c. 155, ss. 98 and 99.

"6. The Hindoo Law, in all civil actions in which a Hindoo is defendant.

"7. Mahomedan law, in all civil actions in which a Mahomedan is defendant.

"To administer justice under these various codes of law, the Supreme Court, is by its Charter, vested with five distinct jurisdictions, Criminal, Civil, Equity, Ecclesiastical, and Admiralty, and it is enjoined to accommodate its process, rules and orders, to the religion and manners of the natives, so far as may consist with the due execution of the laws and the attainment of justice.

"It must be obvious to every person, that the greatest difficulty must attend the bringing to perfection, a system so complicated, as embraces the dispensation of so many codes, of law, and the exercise of so many jurisdictions. It is left to the Judges to add to, abrogate and alter: but as regards this purpose they arrive in India with much to learn, and they generally leave it, before they feel sufficient confidence in their experience to attempt improvements." (Clarke, pp. iv to ix.)

As an example of this, reference is then made by Mr. Clarke to the practice which till then recently, prevailed of administering oaths to Hindoo witnesses; and to the alteration, in this respect, made by the then Chief Justice exercising the powers "which it is obvious the Charter

(1) Clarke was writing in 1829.

intended to confer "(1) and directing that a witness should be sworn in whatever manner was most binding on his conscience. (In this respect now see the Oaths Act X of 1873.)

"Some of the evils in consequence of the English Statutes not extending to this country, were remedied by Act 9, Geo. 40, c. 74, for improving the administration of criminal justice in the East Indies and Act 9, Geo. 4, c. 73, for the relief of Insolvent Debtors."

By 3 and 4 Will. 4, c. 85, ss. 43-46(2) the Governor General in Council was empowered to legislate for all persons, British or Native and for all Courts of Justice, whether established by His Majesty's Charter or otherwise. (See the India Councils Acts of 1861, 1892 and 1909 and clauses 37 and 38, Letters Patent, *post*.)

Reference may be made to the Collection of Statutes relating to India Vol. I, containing statutes to the end of 1887 published by the Superintendent, Government Printing, India, and the preface thereto by Dr. S. C. Banerjee, Legal Assistant, Legislative Department, also to the preface by Mr. Whitley Stokes to the first edition of such Statutes set out in Vol. I preface, pp. iii to vii.

Volume II containing the Statutes down to 30th June 1912 is expected shortly.

It will be seen from Mr. Whitley Stokes' preface to that collection that there is still a good deal of uncertainty as to the English statute law in force in Presidency towns, and he suggests that the Legislature in consultation with the Judges, might usefully declare that certain of the Statutes (specifying them) passed before 1726, shall be deemed to be in force in the Presidency towns and that all other Statutes passed before that year shall be repealed so far as they affect British India. As to the statutes passed subsequently to 1726 there is, he states, less difficulty, some have been expressly applied to India by Acts of the Indian Legislature (see Acts XIII of 1840, XIV of 1840 both repealed, XXIV of 1841 and IX of 1842). As to the others the rule, he states, is that none but the unrepealed statutes expressly or by necessary implication, extending to India are in force in any part of this country—see *Edwards versus Ronald*, 1 Knapp, P. C. C., 259, Bank of

(1) See *cl. 13, post p. 21*.

(2) As to the power of legislation before this Act, see minute of Sir Charles Grey (the C. J. of the Supreme Court) dated 2nd Oct. 1829. *Smout & Ryan*, p. 52.

Hindustan versus Prem Chand Rai Chand, 5 Bom., O. C. J. 91. Mr. Stokes also refers to the doubt as to how far some of the modern repealing and amending English statutes are in force in this country. It is understood that Parliamentary legislation on these subjects is now in contemplation.

With regard to the rules, it appears from the preface to Smoult & Ryan, p. iii, that the Original Rules and Orders of the Supreme Court are understood to have been drawn up in England, at the same time and probably with the same sanction as the Charter, which was framed under the high authority described in the note thereto (see p. 15, *post*) but it is supposed that they were first drawn by Sir Elijah Impey, and afterwards revised by him on his voyage to India.

There were 5 editions of those rules, the 5th being the one by Mr. Longueville Clarke already referred to.

Then came the edition by Smoult & Ryan in 1839.

There were two editions with notes, one by Mr. Skinner in 1850 and one by Mr. Belchambers in 1868.

There does not appear to have been any other publication until Mr. Belchambers' book in 1879, from the preface to which it appears that his compilation comprised "not only the rules of the High Court in its several jurisdiction but also such of the rules of the late Supreme and Sudder Courts as are still in force, including the old Ecclesiastical rules relating to Testamentary and Intestate procedure, which though virtually superseded, continue to be referred to as providing for matters otherwise unprovided for."

A second edition of his book was published in 1900 after Mr. Belchambers had retired. This included the Appellate Side rules as revised in 1891. These latter rules were again revised in 1910 and being published separately are not included in this publication.

In 1900 it was considered necessary that the Rules for the Original Side should be revised and brought up-to-date, and that duty was entrusted by the present Chief Justice Sir Lawrence Jenkins to the late Registrar Mr. W. R. Fink to whose industry much is due. Mr. Fink devoted most of his time before and after office hours to this work, and was engaged on it until he retired in 1911. The rules as drafted by him were modelled to a very large extent on those of the Bombay High Court, and involved a

considerable departure from the established procedure of this Court.

On further consideration the rules as originally drafted were modified and recast so as to bring them into closer conformity with the procedure with which practitioners here were familiar. This was done, under the guidance of the Chief Justice, by the present Registrar with the assistance of Mr. Maurice Remfry, the Deputy Registrar, and Baboo Jyotish Chandra Mitra, Assistant Registrar, in consultation from time to time with a small Committee of the Incorporated Law Society of Calcutta (Messrs. M. M. Chatterjee, J. C. Dutt, F. M. Leslie and occasionally Baboo Kallynauth Mitter).

The object has been to eliminate such of the old rules as the provisions of the Code and Legislative Acts have rendered unnecessary; to retain the old rules as far as practicable, and to pave the way for a closer approach in the future to the English rules of procedure.

The present publication does not pretend to give notes of all the decisions in connection with the Charters and the rules, as time for the necessary research has not been available. The object has been chiefly to assist the profession by pointing out the changes made and in important matters the reasons for the same.

The Editor desires to express his thanks to the gentlemen mentioned above for their assistance before the Rules were actually passed by the Court, and to thank Mr. M. Remfry and Baboo J. C. Mitra for their help in bringing out this book, especially in connection with the Index, the Comparative Table at p. 661 and the marginal references against each Rule showing whether it is new or upon what rule of the English or Indian High Courts it is based.

His grateful acknowledgments are also due to the Executrix of the late Mr. Belchambers for permission to make use of the notes in that gentleman's book of the old Rules, which notes have been of special use in connection with the Charter and Letters Patent.

In conclusion, the Editor trusts the profession will excuse inaccuracies, remembering that though he was to some extent able to avail himself of the last vacation, yet the greater portion of the work has had to be done before and after office hours.

Suggestions and notice of any errors or omissions will be gratefully received.

J. H. H.

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JUDGES OF THE HIGH COURT.

From its Establishment in 1862.

CHIEF JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
Hon'ble Sir—		
Barnes Peacock, <i>Knight</i> ⁽¹⁾	July 1st, 1862	Retired, Apl. 26th, 1870.
Richard Couch, <i>Knight</i> ⁽²⁾	Apl. 26th, 1870	Do. Apl. 5th, 1875.
Richard Garth, <i>Knight</i>	June 26th, 1875	Do. Mar. 24th, 1886.
William Comer Petheram, <i>Knight</i>	Mar. 24th, 1886	Do. Oct. 31st, 1896.
Francis Maclean, <i>Knight</i> , K.C.S.I.	Nov. 9th, 1896	Resigned, Mar. 11th, 1909.
Lawrence Hugh Jenkins, M.A., Q.C., Kt., K.C.I.E. ⁽³⁾	Apl. 19th, 1909	
PUISNE JUSTICES.		
Hon'ble Sir—		
Charles Robert Mitchell Jackson, <i>Knight</i> , Bar.-at-Law ⁽⁴⁾ , ⁽¹⁰⁾	July 1st, 1862	Retired, Feb. 1863.
Mordant Lawson Wells, <i>Knight</i> , Bar.-at-Law ⁽⁴⁾ , ⁽¹²⁾	July 1st, 1862	Do. Sept. 1863.
Hon'ble Mr. Justice—		
Henry Thomas Raikes, C.S. ⁽⁵⁾ , ⁽¹²⁾	July 1st, 1862	Resigned, Dec. 31st, 1864.
Charles Binny Trevor, C.S. ⁽⁶⁾ , ⁽⁸⁾ , ⁽¹²⁾	July 1st, 1862	Retired, Apl. 23rd, 1867.
George Loch, C.S. ⁽⁶⁾ , ⁽⁷⁾ , ⁽¹²⁾	Dec. 4th 1863	Do. Apl. 1st, 1873.
Henry Vincent Bayley, C.S. ⁽⁶⁾ , ⁽¹²⁾	July 1st, 1862	Died, Feb. 2nd, 1873.
Charles Steer, C.S. ⁽⁶⁾ , ⁽¹²⁾	July 1st, 1862.	Retired, Nov. 23rd, 1865.
John Paxton Norman, Bar.-at- Law ⁽⁶⁾ , ⁽¹²⁾	July 1st, 1862	Died by the hand of an assassin, Sept. 21st, 1871.
Walter Morgan, Bar.-at-Law ⁽⁸⁾ , ⁽¹²⁾	July 1st, 1862	Resigned, June 1868.
Francis Baring Kemp, C.S. ⁽¹⁰⁾ , ⁽¹²⁾	July 1st, 1862	Retired, Apl. 15th, 1878.
Walter Scott Seton-Karr, C.S. ⁽¹¹⁾ , ⁽¹²⁾	July 1st, 1862	Resigned, July 1868.
Louis Stuart Jackson, C.S., C.I.E. ⁽¹²⁾ , ⁽¹²⁾	July 1st, 1862	Retired, June 23rd, 1880.
Edward De Latour, C.S., <i>Cffg.</i>	July 23rd, 1862	Died, Aug. 1862.

⁽¹⁾ Was the last Chief Justice of the Supreme Court, and the first Chief Justice of the High Court.⁽²⁾ Officiated as a President of the Commission to investigate the charges against the Gaekwar of Baroda, from 18th February to 4th April 1876.⁽³⁾ Was a Puisse Judge from 29th April 1866 to 19th April 1899, was Chief Justice of Bombay from 22nd April 1899 to 14th March 1909, was on Special duty in the Home Department from 12th January to 7th February 1903, was on Special duty under the Government of India in the Home Department from 9th to 16th April 1903, was on deputation under Government of India, Legislative Department, from 11th June to 31st August 1907.⁽⁴⁾ Was a Puisse Judge of the Supreme Court when it was abolished.⁽⁵⁾ Was a Judge of the Sudder Dewanny Adawlut when it was abolished.⁽⁶⁾ Officiated as Chief Justice from 9th August to 10th September 1866.⁽⁷⁾ Was absent on leave as a Judge of the Sudder Dewanny Adawlut, and did not take his seat on the Bench of the High Court until 4th December 1868.⁽⁸⁾ Officiated as Chief Justice from 12th April 1864 to 18th February 1865; and again from 7th February to 16th March 1870; and again from 8th November 1870 until his death.⁽⁹⁾ Was appointed the first Chief Justice of the High Court of the North Western Provinces, established in 1860.⁽¹⁰⁾ Officiated as Chief Justice from 21st September to 12th November 1871.⁽¹¹⁾ Was appointed Foreign Secretary in July 1866.⁽¹²⁾ Officiated as Chief Justice from 19th August to 17th September 1878.⁽¹³⁾ Was one of the thirteen Puisse Judges of the High Court appointed by the Letters Patent 1862.

PUISNE JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
Hon'ble Mr. Justice— George Campbell, C.S. (<i>Offg.</i> until confirmed on 16th April 1863).	Nov. 8th, 1862	Resigned, Nov. 27th, 1867, on being appointed Chief Commissioner, Central Provinces.
Sumboo Nath Pundit, Vakil .	Feb. 2nd, 1863	Died, June 6th, 1867.
Edward Parkins Levinge, C.S. .	Mar. 2nd, 1863	Do. Mar. 2nd, 1865.
Arthur Austin Roberts, C.S., <i>Offg.</i>	Apl. 16th, 1863	Retired, Nov. 27th, 1863.
Henry Mills, Bar.-at-Law. .	Feb. 15th, 1864	Died, Mar. 1864.
Elphinston Jackson, C.S. (<i>Offg.</i> until confirmed on 1st Aug. 1865) ⁽¹⁾	Mar. 9th, 1864	Do. Feb., 1873.
Andrew Thomas Turton Peterson;		
Bar.-at-Law, <i>Offg.</i>	Apl. 12th, 1864	Vacated, Feb. 13th, 1865.
Robert James Scott, C.S. .	May 2nd, 1864	Died while absent on furlough obtained for 15 months from 24th May 1864.
John Budd Phear, Bar.-at-Law .	Aug. 9th, 1864	Retired, Aug. 9th, 1876.
Arthur George Macpherson, Bar.-at-Law (<i>Offg.</i> until confirmed on 1st Aug. 1865) ⁽²⁾	Feb. 25th, 1865	Do. Oct. 1st, 1877.
William Markby, Bar.-at-Law .	June 19th, 1866	Do. Sept. 16th, 1878.
Dwarkanath Mitter, Vakil (<i>Offg.</i> until confirmed on 3rd June 1868)	July 16th, 1867	Died, Feb. 25th, 1874.
Frederick Augusta Bernard Glover, C.S. (<i>Offg.</i> until confirmed on 3rd June 1868) ⁽²⁾ .	Mar. 3rd, 1868	Do. Aug. 10th, 1876.
Hon'ble Sir—		
Charles Perry Hobhouse, C.S.,		
Baronet (<i>Offg.</i> until confirmed on 31st Aug. 1868) ⁽⁴⁾	Mar. 25th, 1868	Retired, Dec. 27th, 1871.
Hon'ble Mr. Justice—		
Gregory Charles Paul, Bar.-at-		
Law, <i>Offg.</i>	Nov. 30th, 1870	Vacated, Dec. 3rd, 1871.
Unokool Chunder Mookerjee,		
Vakil, <i>Offg.</i>	Dec. 6th, 1870 .	Died, Aug. 17th, 1871.
William Ainslie, C.S. (<i>Offg.</i> until confirmed on 13th May 1873) .	Nov. 21st 1870	Retired, June 1st, 1880.
Charles Pontifex, Bar.-at-Law .	Aug. 31st, 1872	Do. June, 1882. ⁽⁵⁾
Ernest George Birch, C.S. (<i>Offg.</i> until confirmed on 13th May 1873)	Feb. 24th, 1873	Do. Apl. 18th, 1879.
George Gordon Morris, C.S. (<i>Offg.</i> until confirmed on 7th July 1874)	June 30th, 1873	Do. Nov. 17th, 1882.

(1) Officiated on a previous occasion.

(2) Officiated as a Puisne Judge on a previous occasion, and as Chief Justice from 13th February to 25th June 1875.

(3) Officiated on two previous occasions.

(4) Officiated on three previous occasions.

(5) The exact date is not known, for Mr. Justice Charles Pontifex retired while he was on furlough.

PUISNE JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
Hon'ble Mr. Justice— Romesh Chunder Mitter, Vakil <i>(Offg. until confirmed on 20th July 1877) ⁽¹⁾</i> William Fraser McDonell, C.S. <i>(Offg. until confirmed on 27th June 1878)</i> James Sewell White, Bar.-at-Law John Pill Kennedy, Bar.-at-Law, <i>Offg.</i>	Mar. 30th, 1874 Apl. 18th, 1874 Nov. 16th, 1876 Apl. 7th, 1877	Retired, Jan. 1st, 1880. Do. Apl. 30th, 1886. Do. May 10th, 1882. Vacated, Dec. 12th, 1877.
Hon'ble Sir Henry Thoby Prinsep, C.S., <i>Knight (Offg. until confirmed on 22nd August 1878) ⁽²⁾</i>	Apl. 13th, 1877	Retired, Apl. 1st, 1904.
Hon'ble Mr. Justice— Henry Baring Lawford, C.S., <i>Offg.</i> Henry Stewart Cunningham, Bar.-at-Law ⁽³⁾ Arthur Wilson, Bar.-at-Law ⁽⁴⁾ Loftus Richard Tottenham, C.S. <i>(Offg. until confirmed on 7th Aug. 1879) ⁽⁵⁾</i> Alexander Thomas Maclean, C.S. ⁽⁶⁾	July 18th, 1877 Nov. 16th, 1877 Nov. 12th, 1878 Apl. 18th, 1879 Nov. 17th, 1879	Vacated, Sept. 16th, 1877. Retired, July 26th, 1888. Resigned, Apl. 21st, 1892. Do. Mar. 7th, 1893. Do. Feb. 13th, 1885.
Lewis Price Delves Broughton, Bar.-at-Law, <i>Offg.</i> Charles Dickson Field, C.S. <i>(Offg.</i> <i>until confirmed on 18th Oct. 1880)</i> James O'Kinealy, C.S. <i>(Offg. until confirmed on 22nd Feb. 1883)</i>	May 11th, 1878 June 23rd, 1880. Jan. 1st, 1882	Vacated, Jan. 29th, 1882. Retired, Sept. 7th, 1866. Do. June 23rd, 1899.
Mohendra Nath Bose (Subordi- nate Judicial Service), Offg. William Macpherson, C.S. <i>(Offg.</i> <i>until confirmed on 10th Jan.</i> <i>1885) ⁽⁶⁾</i>	Jan. 1st, 1882 Apl. 8th, 1884	Vacated, Aug. 1st, 1882. Retired on the 26th Mar. 1900.
James Quain Pigot, C.S. <i>(Offg. un- til confirmed on 11th July 1882)</i> John Freeman Norris, Bar.-at-Law C. J. Wilkinson, Bar.-at-Law, <i>Offg.</i>	May 4th, 1882 June 17th, 1882 Mar. 13th, 1883	Retired, Mar. 7th, 1896. Resigned, Nov. 20th, 1895. Died, during the absence on privilege leave obtained on 19th Nov. 1883.
Henry, Boverley, C.S. <i>(Offg. until confirmed on 8th May 1885) ⁽⁷⁾</i> E. J. Trevelyan, Bar.-at-Law Chunder Madhab Ghose, Vakil ⁽⁸⁾ W. F. Agnew, Bar.-at-Law, <i>Offg.</i> ⁽⁹⁾ John Peter Grant, C.S., <i>Offg.</i> ⁽⁷⁾ G. E. Porter, C.S., <i>Offg.</i>	Jan. 12th, 1885 Jan. 12th, 1885 Jan. 12th, 1885 Mar. 16th, 1886 Mar. 2nd, 1886 Mar. 8th, 1886	Retired, Sept. 11th, 1897. Do. May 9th, 1898. Resigned, Jan. 2nd, 1907. Vacated, Dec. 23rd, 1886. Do. Sept. 12th, 1886. Do. Sept. 13th, 1886.

(1) Officiated as Chief Justice on two occasions.

(2) "On special duty to supervise the revision of the Codes of Civil and Criminal Procedure" from 28th May 1896 to 28th May 1898. Performed the duties of the Chief Justice from 16th May to 3rd August 1902.

(3) On deputation as a member of the Finance Committee, from 16th March 1886 to 23rd December 1886.

(4) Acted as member in the Crawford Commission from 1st November 1888 to January 1889.

(5) Officiated on a previous occasion.

(6) Officiated on two previous occasions.

(7) Officiated on four previous occasions.

(8) Acting Chief Justice from 11th May 1906 to 5th August 1906.

PUISNE JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
PUISNE JUDGES.		
Hon'ble Mr. Justice— Gooroo Das Banerji, M.A., LL.D., Vakil (<i>Offg.</i> until con- firmed on 15th Jan. 1889) . Amir Ali, Bar.-at-Law . . . C. H. Hill, Bar.-at-Law (<i>Offg.</i> until confirmed on 21st Apl. 1892) ⁽¹⁾ . . . Robert Fulton Rampini, C.S. (<i>Offg.</i> until confirmed on 20th April 1893) ⁽²⁾ , ⁽³⁾ . . . Hamilton Wincup Gordon, C.S., <i>Offg.</i> ⁽⁴⁾ . . . S. G. Sale, Bar.-at-Law (<i>Offg.</i> until confirmed on 30th Jan. 1896) ⁽⁵⁾ . . . L. H. Jenkins, Q.C. . . .		
	Nov. 19th, 1888 Jan. 2nd, 1890.	Retired, 1st Feb. 1904. Resigned, 14th April 1904.
	Feb. 5th, 1892 .	Do. 17th Mar. 1904.
	Mar. 7th, 1893 .	Do. 8th Nov. 1908.
	Jan. 17th, 1895	Do. 31st Mar. 1897.
	Nov. 21st, 1895 Apl. 29th, 1896	Do. 8th Oct. 1907. Vacated on 19th Apl. 1899, to assume the Office of Chief Justice of Bombay.
J. F. Stevens, C.S. (<i>Offg.</i> until confirmed on 14th Dec. 1897) ⁽⁴⁾ . . .	Apl. 11th, 1897 Mar. 25th, 1898	Retired, 13th Mar. 1904. Vacated, 8th Sept. 1898.
P. O'Kinealy, Bar.-at-Law, <i>Offg.</i> C. A. Wilkins, C.S. (<i>Offg.</i> until confirmed on 19th Oct. 1899) ⁽⁵⁾ . . .	Nov. 21st, 1898	Resigned, 6th Apl. 1900.
Gilbert S. Henderson, Bar.-at- Law ⁽⁶⁾ . . .	June 13th, 1902 Nov. 21st, 1898	Died, 19th April 1906. Vacated in August 1901 to assume the Office of Chief Justice of the Allahabad High Court.
John Stanley, Q.C. . . .		
J. Pratt, C.S. (<i>Offg.</i> until con- firmed on 18th May 1900) ⁽⁶⁾ . Sir Richard Harington, Bart. ⁽⁷⁾ . Sir Cecil Michael Wilford Brett, <i>Knight</i> , C.S.I., C.S. (<i>Offg.</i> until confirmed on 26th June 1900) F. B. Taylor, C.S., <i>Offg.</i> . . . Sir Harry Lushington Stephen, Bar.-at-Law . . . A. P. Handley, Bar.-at-Law, <i>Offg.</i> ⁽⁶⁾ . . . Saroda Charan Mitra, M.A., B.L., Vakil (<i>Offg.</i> until confirmed on 29th April 1904) ⁽⁶⁾ . . .	July 7th, 1899 . Nov. 20th, 1899 Apl. 18th, 1900 Apl. 3rd, 1901 . Nov. 18th, 1901 Mar. 6th, 1903 . Jan. 26th, 1904	Retired, 16th July 1906. Do. 11th Jan. 1913. Vacated, Nov. 13th, 1902. Do. Nov. 14th, 1903. Retired, 8th Dec. 1908.

(1) Officiated on three previous occasions.

(2) Officiated on four previous occasions.

(3) Twice acted as Chief Justice.

(4) Officiated on a previous occasion.

(5) Officiated on two previous occasions.

(6) Officiated on a previous occasion.

(7) Twice acted as Chief Justice.

PUISNE JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
PUISNE JUDGES.		
B. G. Geidt, C.S. (<i>Offg.</i> until confirmed on 12th May 1904) ⁽¹⁾ .	Mar. 14th, 1904	Resigned, 15th Apl. 1908.
F. E. Pargiter, C.S. (<i>Offg.</i> until confirmed on 4th June 1904) .	Mar. 15th, 1904	Retired, 15th Mar. 1906.
A. E. Staley, C.S., <i>Offg.</i> . . .	Apl. 1st, 1904 .	Vacated, 22nd April 1904.
J. G. Woodroffe, Bar.-at-Law, (<i>Offg.</i> until confirmed on 15th Nov. 1904) . . .	Apl. 15th, 1904.	
Frank Bodilly, Bar.-at Law .	Apl. 18th, 1904	Resigned, 1st Nov. 1906.
Sir Ashutosh Mukerji, Knight, C.S.I., M.A., D.L., D.Sc., F.R.A.S., F.R.S.E., Vakil (<i>Offg.</i> until confirmed on 11th Aug. 1906; was on deputation to Simla as President University Regulation Committee from 8th May to 19th July 1906, was on deputation under the Calcutta University from 23rd Jan. to 17th Dec. 1908) . . .	June 6th, 1904	
B. L. Gupta, C.S., <i>Offg.</i> ⁽²⁾ .	May 11th, 1906	Vacated, 4th Mar. 1907.
Herbert Holmwood, C.S. (<i>Offg.</i> until confirmed on 8th Jan. 1907) ⁽²⁾ . . .	Mar. 30th, 1906	
Charles Peter Caspersz, C.S. (<i>Offg.</i> until confirmed on 8th Jan. 1907) . . .	Mar. 16th, 1906	
E. W. Ormond, Bar.-at-Law, <i>Offg.</i> . . .	Mar. 2nd, 1906.	Vacated, 30th Aug. 1908.
Charles William Chitty, B.A., Bar.-at-Law (<i>Offg.</i> until confirmed on 8th Jan. 1907) .	Jan. 2nd, 1907	
Ernest Edward Fletcher, Bar.-at-Law . . .	Mar. 4th, 1907	
Saiyid Sharfuddin, Bar.-at-Law (<i>Offg.</i> until confirmed on 20th Feb. 1908) . . .	Jan. 2nd, 1907	
Henry Reynell Holled Coxo, C.S. (<i>Offg.</i> until confirmed on 6th May 1908) ⁽²⁾ . . .	Apl. 16th, 1908	

⁽¹⁾ Officiated on four previous occasions.⁽²⁾ Officiated on four previous occasions.⁽³⁾ Officiated on two previous occasions.

PUISNE JUSTICES.	Date of entry on office.	Date of retirement, death or resignation.
PUISNE JUDGES.		
Lal Mohan Das, M.A., B.L., Vakil (<i>Offg.</i> until confirmed on 9th May 1909)	Jan. 23rd, 1908	Resigned, 13th Oct. 1910.
H. L. Bell, Bar.-at-Law, <i>Offg.</i>	Apl. 24th, 1908	Vacated, 27th Aug. 1908.
Alfred Edward Ryves, C.S. (¹)	Nov. 9th, 1908.	Do. 13th Nov. 1909.
Sir Herbert William Cameron Carnduff, <i>Knight</i> , C.I.E., C.S. (<i>Offg.</i> until confirmed on 17th Dec. 1908)	Nov. 9th, 1908	
William Henry Hoare Vincent, C.S., <i>Offg.</i>	Mar. 26th, 1909	Vacated, 8th Sept. 1910.
Digamber Chatterjee, M.A., B.L., Vakil (<i>Offg.</i> until confirmed on 11th August 1909)	May 24th, 1909	
William Teunon, C.S. (<i>Offg.</i> until confirmed on 14th Jan. 1913) (²)	Feb. 5th, 1912 Mar. 31st, 1910.	Vacated, 8th Sept. 1910.
L. P. E. Pugh, Bar.-at-Law, <i>Offg.</i> Nalini Ranjan Chatterjee, M.A., B.L., Vakil (<i>Offg.</i> until con- firmed on 28th Dec. 1910)	Oct. 12th, 1910	
Ashutosh Chaudhuri, M.A., LL.B., Bar.-at-Law (Addi- tional Judge until confirmed 15th Nov. 1913)	Feb. 5th, 1912	
Syed Hassan Imam, Bar.-at-Law (Additional Judge)	Feb. 5th, 1912	
Thomas William Richardson, C.S. (<i>Offg.</i> until confirmed on 29th Jan. 1913) (³)	Mar. 11th, 1912	
Charles Porten Beachcroft, C.S. (Additional Judge)	Jan. 14th, 1913	
Edmund Pelly Chapman, M.A., C.S. (Additional Judge)	Jan. 29th, 1913	
B. B. Newbould, C.S., <i>Offg.</i>	Mar. 21st, 1913	Vacated, 5th Sept. 1913.
Hari Nath Roy (Sub. Jud. Ser.), <i>Offg.</i>	Mar. 28th, 1913	Do. 31st Aug. 1913.
H. Walmsley, C.S., <i>Offg.</i>	Apl. 3rd, 1913	Do. 5th Sept. 1913.
Basanta Kumar Mullick, C.S., (Additional Judge) (¹)	Nov. 22nd, 1913	

(¹) Officiated on a previous occasion.

(²) Officiated on two previous occasions.

(³) Officiated on three previous occasions.

STAT. 13 GEO. 3, CAP. 63.

"An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company as well in India as in Europe." (1773.)

ss. 13—14.

13. "And whereas his late Majesty, King George the Second, did by his letters patent, bearing date at Westminster, the eighth day of January, in the twenty-sixth year of his reign, grant unto the said United Company of Merchants of England, trading to the East Indies, his Royal Charter, thereby, amongst other things, constituting and establishing Courts of civil, criminal, and ecclesiastical jurisdiction, at the said United Company's respective settlements at Madraspatnam, Bombay, on the Island of Bombay, and Fort William in Bengal; which said Charter does not sufficiently provide for the due administration of justice in such manner as the state and condition of the Company's presidency of Fort William in Bengal, so long as the said Company shall continue in the possession of the territorial acquisitions before mentioned, do and must require"; be it therefore enacted, by the authority aforesaid, that it shall and may be lawful for His Majesty, by charter or letters patent under the great seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and three other Judges, being Barristers in England or Ireland, of not less than five years standing, to be named from time to time by His Majesty, his heirs and successors; which said Supreme Court of Judicature, shall have, and the same Court is hereby declared to have, full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries as shall be approved of by the said Governor-General in Council; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of Justice, and the due execution of all or any of the powers which, by the said Charter, shall or may be granted and committed to the said Court; and also shall be at all times a Court of Record, and shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the said town of Calcutta and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto:

Royals Charter,
dated 8th Jan.
1753, 26 G. 2.

Authorises His Majesty to establish a Supreme Court of Judicature at Fort William in Bengal, to consist of a Chief Justice and three other Judges.

To exercise all Civil, Criminal, Admiralty and Ecclesiastical Jurisdiction, to appoint Officers, and establish Rules of practice and for process.

To be a Court of Record, and of Oyer and Terminer and Gaol Delivery.

14. Provided, nevertheless, *and be it further enacted, by the authority aforesaid*, that the said new Charter, which His Majesty is hereinbefore empowered to grant, and the jurisdiction, powers

Charter and Jurisdiction and powers to be thereby established to extend

s. 14.

to all British subjects, residing in Bengal, etc.

Supreme Court to have power to try all complaints, against subjects of the King, for crimes and offences, and all actions against them and persons in service of Company, or subjects.

and authorities to be hereby established, shall and may extend to all British subjects who shall reside in the kingdoms or provinces of Bengal, Behar and Orissa, or any of them, under the protection of the said United Company; and the same Charter shall be competent and effectual, and the Supreme Court of Judicature therein and thereby to be established, shall have full power and authority to hear and determine all complaints against any of His Majesty's subjects, for any crimes, misdemeanors or oppressions committed, or to be committed, and also to entertain, hear and determine any suits or actions whatsoever, against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint, against any person who shall at the time when such debt or cause of action or complaint shall have arisen, have been employed by, or shall then have been, directly or indirectly, in the service of the said United Company, or of any of His Majesty's subjects (1).

Enacting words in italics rep. as to United Kingdom, 51 & 52 Vict., c. 3.

(1) As to whether the jurisdiction of the Court is to be traced to this Statute as "its fountain head," and not to the Charter, the following observations of Sir Elijah Impey are worthy of consideration. "But I then understood, and now contend, that the legality of the jurisdiction of the Supreme Court (except as to some special regulations ordained by that act), does not depend on any authority conveyed to His Majesty by the 13 G. 3, and that it is no otherwise, as to the present question, an enabling statute, than by removing the then existing Courts in Calcutta, during the continuance of which, under the Charter of G. 2, His Majesty could not create any new Court, but they being actually thereby abolished, it became lawful for His Majesty to grant a new Charter of Justice, and republish his laws in that town, as his predecessors had done. And as the territorial acquisitions of Bengal, Behar and Orissa, really were, and were by Act of Parliament stated to be, in the East India Company, and more particularly, as the Act of the 13 G. 3, assumed a civil jurisdiction over certain inhabitants of those provinces described by that Act, the legislature had thereby recognised those provinces to be part of the dominions of the Crown, and the King, in fact, has done no more than exercise his undoubted prerogative through those dominions, by giving a criminal jurisdiction over the persons answering to the same description as those over whom the statute had before exercised a civil jurisdiction. If it was not contrary to justice, that the Parliament should assume a right of civil jurisdiction, it could not be contrary to justice in the Crown, to grant a co-extensive criminal jurisdiction; both rights are founded on the same claim. On these grounds I contend, that His Majesty's prerogative was legally exerted in granting the personal criminal jurisdiction in the provinces at large, without the aid of the Act. But with respect to the local jurisdiction in the town of Calcutta, though I equally contend that the authority of the 13 G. 3, was not necessary to the legality of it; yet, if that had been necessary, it will appear by the words of the Charter, compared with the words of the 13 G. 3, that it is expressly authorised by that Act." Sir Elijah Impey's Speech. See note *post*, p. 15.

The opinions of Puller, C. J., in the case of *Rex. v. Goolnoth Mullick* and another, and of Russell, C. J., in the *Goods of Behee Muttra, deceased*, seem to rest the jurisdiction of the Court upon this statute. See *Smoult & Ryan*, p. 43. The jurisdiction of the Court as declared in this section is explained and defined by 21 Geo. III, c. 70, ss. 8, 9 and 10; see *post*, pp. 51 and 52,

15. Provided also, that the said Court shall not be competent to hear, try or determine any indictment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General, or any of the said Council, shall or may be charged with having committed, in Bengal, Behar and Orissa.

Court not competent to hear and determine indictments or informations against the Governor-General, etc., except, etc.

16. *Provided also, and be it enacted, that the said Supreme Court shall hear and determine any suits or actions whatsoever, of any of His Majesty's subjects against any inhabitant of India, residing in any of the said Kingdoms or Provinces of Bengal, Behar or Orissa, or any of them, upon any contract or agreement, in writing, entered into by any of the said inhabitants with any of His Majesty's said subjects, where the cause of action shall exceed the sum of five hundred current rupees, and where the said inhabitant shall have agreed in the said contract, that, in case of dispute, the matter shall be heard and determined in the said Supreme Court; and all such suits or actions may be brought, in the first instance, before the said Court, or by appeal from the sentence of any of the Courts established in the said provinces or any of them.*

Court to have jurisdiction in all actions by subjects of the King against inhabitants of India, residing in Bengal, etc., upon agreement between them where cause of action exceeds Rs. 500 and defendant shall have submitted to jurisdiction.

Action may be brought in Supreme Court or by Appeal from the Provincial Courts.

Rep. 55 & 56 Vict., c. 19; rep. also as to British India by the Repealing Act XIV of 1870, s. 1 and Schedule.

17. And it is hereby further enacted and provided, that nothing in this act shall extend to subject the person of the Governor-General, or any of the said Council, or Chief Justice and Judges respectively, for the time being, to be arrested or imprisoned upon any action, suit or proceeding in the said Court.

Governor-General, Council, or Judges, not subject to be arrested.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

18. *And be it further enacted, by the authority aforesaid, that it shall and may be directed, in and by the said new Charter which His Majesty is hereinbefore empowered to grant, that in case any person or persons whatsoever, shall think himself, herself or themselves aggrieved by any judgment or determination of the said Supreme Court of Judicature, to be established as aforesaid, he, she or they, shall and may appeal from such judgment or determination to His Majesty in Council, his heirs or successors, within such time, in such manner, and in such cases, and on such security, as His Majesty, in his said Charter, shall judge proper and reasonable to be appointed and prescribed."*⁽¹⁾

Appeal to be allowed to His Majesty in Council from any judgment of Supreme Court.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by VI of 1874, s. 2 and Schedule.

19. *And be it further enacted, by the authority aforesaid, that so much of the said Charter, granted by his said late Majesty, as respects or relates to the establishment of the Mayor's Court at Calcutta aforesaid, in Bengal, or to the civil, criminal or ecclesiastical jurisdiction thereof, in the said United Company's settlement there, or the subordinates thereunto belonging, in case a new Charter shall be granted by*

So much of the Charter, 26 G. II as respects the Mayor's Court at Calcutta to be repealed,

(1) See Charter, cl. 23, post, p. 43.

ss. 19—21.

otherwise to
be in full
force.

His Majesty, in pursuance of this act, and shall be openly published at Fort William aforesaid, from and immediately after such publication shall cease, determine, and be absolutely void, to all intents and purposes ; but, nevertheless, the said Charter so granted by his said late Majesty, shall, in all other respects, and as for and concerning all or any other of the said Company's principal presidencies or settlements to which the same relates, or to any factories or places now or hereafter to be subordinate to such principal settlements, continue, be and remain in full force and virtue, according to the true intent and meaning thereof, and that as fully and effectually to all intents and purposes whatsoever, as if this act had never been made, or such new Charter as aforesaid should never have been granted.

Rep. 55 & 56 Vict., c. 19 ; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

All records and muniments of Mayor's Court, or of Courts of Oyer and Terminer, at Fort William, to be delivered to, and preserved by, the new Court.

20. And be it further enacted, by the authority aforesaid, that all the records, muniments, and proceedings whatsoever, of and belonging to the said Mayor's Court at Calcutta aforesaid, or to the Courts of Oyer and Terminer and Gaol Delivery at Fort William aforesaid, established by the said Charter of his said late Majesty, shall, from and immediately after such Court of Judicature, which His Majesty is hereinbefore empowered to erect, shall be established at Fort William as aforesaid, be delivered over, preserved, and deposited for safe custody, in the said new Court of Judicature, to which all parties concerned shall and may resort, and have recourse, upon application to the said Court.

Rep. as to U. K. 50 & 51 Vict., c. 59; and as to B. I. by XIV of 1870, s. 1 and Schedule.

Salaries established to be paid to the Governor-General and Council, and Chief Justice and Judges.

21. And be it further enacted, by the authority aforesaid, that during such time as the territorial acquisitions shall remain in the possession of the said Company, the Court of Directors of the said United Company shall, and they are hereby required to, direct and cause to be paid, certain and established salaries to the Governor-General, and to each of the Council of the said United Company's Presidency of Fort William in Bengal, and to the Chief Justice, and each of the Judges of such Supreme Court of Judicature at Fort William, as shall be by the said new Charter established ; that is to say, to the Governor-General, twenty-five thousand pounds by the year, and to each of the Council of the said United Company's Presidency of Fort William in Bengal, ten thousand pounds by the year ; and to the Chief Justice eight thousand pounds by the year ;⁽¹⁾ and to each of the Judges of the said Supreme Court of Judicature at Fort William, six thousand pounds by the year ;⁽¹⁾ and that such salaries shall be paid and payable to each and every of them respectively, for the time being, out of the said territorial acquisitions in the Kingdoms of Bengal, Behar and Orissa.

Governor-General £25,000 by the year, Members of Council £10,000, Chief Justice £8,000, each of the Judges £6,000.

Rep. as to U. K. 50 & 51 Vict., c. 59 ; rendered obsolete by 3 & 4 Will. 4, c. 85, s. 76 ; 24 & 25 Vict., c. 67, s. 4 and c. 104, s. 6.

(1) See Note to cl. 7 of the Charter, post, p. 18.

22. And be it further enacted, by the authority aforesaid, that the salaries of such Governor-General in Council, and of such Chief Justice and Judges of such Supreme Court of Judicature, as aforesaid, shall take place and commence in respect to all such persons who shall be resident in Great Britain at the time of their appointment, upon and from the day on which such persons shall embark from Great Britain; and that the salaries of all such persons who shall at the time of their appointment be resident in India, shall commence and take place from and after their respectively taking upon them the execution of their office, as aforesaid; and that all such salaries to such Governor-General and Council, and of such Chief Justice and Judges, shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fees of office, perquisites, emoluments, or advantages whatsoever, shall be accepted, received or taken by such Governor-General and Council, or by such Chief Justice and Judges, as aforesaid, or any of them, in any manner, or on any account or pretence whatsoever, other than such salaries and allowances as are in and by this act directed to be paid to them respectively.

When such salaries shall commence, if in Great Britain at the time of appointment.

When, if in India.

Rep. as to U. K. 50 & 51 Vict., c. 59; rendered obsolete by 3 & 4 Will. 4, c. 85, s. 76; 24 & 25 Vict., c. 67, s. 4 and c. 104, s. 6.

23. And be it further enacted, by the authority aforesaid, that no Governor-General, or any of the Council of the said United Company's Presidency of Fort William in Bengal, or any Chief Justice, or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person or persons for his or their use, or on his or their behalf, accept, receive, or take, of or from any person or persons, in any manner, or on any account whatsoever, any present, gift donation, gratuity or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity or reward; and that no Governor-General, or any of the said Council, or any Chief Justice or Judge of the said court shall carry on, be concerned in, or have any dealing or transactions by way of traffic or commerce of any kind whatsoever, either for his or their use or benefit, profit or advantage or for the benefit or advantage of any other person or persons whatsoever, (the trade and commerce of the said United Company only excepted,) any usage or custom to the contrary thereof in any wise notwithstanding.

Governor-General, or Council or Judges, not to accept any present;

not to be concerned in any transaction by way of traffic.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

Last paragraph in italics rep. by 33 Geo. 3, c. 52, s. 146.

24. And be it further enacted, by the authority aforesaid, that from and after the first day of August one thousand seven hundred and seventy-four, no person holding or exercising any civil or military office, under the Crown or the said United Company, in the East Indies, shall accept, receive, or take, directly or indirectly, by himself or any other person or persons on his behalf, or for his use or benefit, of and from any of the Indian Princes or Powers,

No persons holding a Civil or Military office under the Crown or Company, shall accept any present, etc., from any Indian Prince or Native of

ss. 24—25, 30.

Penalty on
persons offend-
ing and being
convicted,

and may be
sent to England
unless, etc.

or their Ministers or Agents, or any of the natives of Asia, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, upon any account, or on any pretence whatsoever; or any promise or engagement for any present, gift, donation, gratuity, or reward; and if any person holding or exercising any such civil or military office, shall be guilty of any such offence, and shall be thereof legally convicted in such Supreme Court at Calcutta, or in the Mayor's Court in any other of the said United Company's settlements, where such offence shall have been committed, every such person so convicted shall forfeit double the value of such present, gift, donation, gratuity or reward, so taken and received; one moiety of which forfeiture shall be to the said United Company, and the other moiety to him or them who shall inform or prosecute for the same; and also shall and may be sent to England, by the order of the Governor and Council of the Presidency or settlement, where the offender shall be convicted, unless such person so convicted shall give sufficient security to remove him or themselves within twelve months after such conviction.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

Last paragraph in italics rep. by 24 Geo. 3, c. 25, s. 47.

See 33 Geo. III, c. 52, ss. 62-63 and 3 & 4 Will. IV, c. 85, s. 76.

And see also collection of rules and orders relating to conduct of public servants by G. K. Roy.

Not to extend
to Counsellors,
Physicians,
Surgeons, and
Chaplains,
receiving
professional
fees, etc.

25. Provided always, and be it further enacted, by the authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to prohibit or prevent any person or persons who shall carry on or exercise the profession of a Counsellor at Law, a Physician, or a Surgeon, or being a Chaplain, from accepting, taking or receiving any fees, gratuities, or rewards, in the way of their profession.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

No subject of
His Majesty in
India shall take
on loan monies,
etc., above the
rate of 12 per
cent. per
annum.

All such
securities
to be void.

30. And be it further enacted, by the authority aforesaid, that no subject of His Majesty, his heirs and successors, in the East Indies, shall, upon any contract which shall be made from and after the said first day of August, one thousand seven hundred and seventy-four, take, directly or indirectly for loan of any monies, wares, merchandise, or other commodities whatsoever, above the value of twelve pounds for the forbearance of one hundred pounds for a year; and so after that rate for a greater or less sum or for a longer or shorter time; and that all bonds, contracts and assurances whatsoever, made after the time aforesaid, for payment of any principal or money to be lent, or covenanted to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of twelve pounds in the hundred, as aforesaid, shall be utterly void. And all and every such person or persons whatsoever who shall, after the time aforesaid, upon any contract to be made after the said first day of August, one thousand seven hundred and seventy four, take,

accept, and receive, by way or means of any corrupt, bargain, loan, exchange, shift, or interest of any wares, merchandises, or other thing or things whatsoever, or by any deceitful ways or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, of and for their money or other thing, above the sum of twelve pounds for the forbearing of one hundred pounds for a year and so after that rate for a greater or lesser sum, or for a longer or shorter term, shall forfeit and lose, for every such offence, treble the value of the monies, wares, merchandises, and other things so lent, bargained, exchanged or shifted, with costs of suit; one moiety whereof shall be to the said United Company, and the other moiety to him or them who will sue for the same in the said Supreme Court of Judicature, at Fort William in Calcutta, or in the Mayor's Court in any other of the said United Company's settlements, where such offence shall have been committed, by action of debt, bill, plaint, or information, in which no essoin, wager of law, or protection, shall be allowed, and in case no such action, bill, plaint or information shall have been brought, and prosecuted with effect within three years, that then, it shall and may be lawful to and for the party aggrieved, to sue and prosecute for the recovery of all sums of money paid, over and above such rate of interest.

And all such persons taking, by means of corrupt bargain, loan, etc., of any wares, etc., above the rate of 12 per cent. per annum, shall forfeit for every offence, treble the value of the monies, wares, etc.

One moiety to go to the Company, and the other to the Prosecutor.

Rep. as to U. K. 50 & 51 Vict., c. 59; rep. as to B. I. by XXVIII of 1855, s. 1.

Interest.—See Act 32 of 1830 by which the provisions of 3 and 4 Will. 4, c. 42, s. 28, have been extended to India; Act 28 of 1855, s. 2; Act IV of 1882, ss. 77 and 84; C. P. C. (V of 1908). S. 34 and note to that section in Woodroffe and Amir Ali's C. P. C.

34. And be it further enacted by the authority aforesaid that all offences and misdemeanors which shall be laid, tried and enquired of in the said Supreme Court, shall be tried by a Jury of British subjects resident in the town of Calcutta, and not otherwise.

All offences to be tried by a Jury of British subjects.

Rep. as to U. K. 50 & 51 Vict., c. 59; rep. as to B. I. by X of 1875, s. 2 and Schedule.

(See note to cl. 19 of the Supreme Court Charter, *post*, p. 33.)

35. And be it further enacted, by the authority aforesaid, that after any judgment of the said Supreme Court of Judicature, or of any Court of Judicature, at any of the said United Company's settlements, against any of the said United Company's servants, civil or military, for any debt or penalty due or belonging to the said United Company, shall be made known to the Court of Directors for the time being of the said United Company, it shall not be lawful to release or compound such sentence or judgment or to release, discharge, or put a stop to any prosecution, suit or action, commenced, or to be commenced, for carrying on any illicit trade, or for any debt or penalty due to the said United Company, or to restore any servant or servants whatever of the said Company, who shall have been

Company not to compound sentences of Supreme Court against Company's servants,

are to restore any servant dismissed for misbehaviour,

ss. 35—36.

without consent of three parts in four of Directors, and a like majority of Proprietors in a General Court.

removed or dismissed from his or their office or employment, for or upon account of any misbehaviour, without the consent of three parts in four of the Court of Directors, to be taken by ballot, and also the consent of three parts in four in number of the proprietors of the said United Company, who shall be present, and give their votes by ballot, to be taken at a General Court to be specially called for that purpose, and of which fourteen days public notice, at the least, shall be given before the holding the same, and of the particular occasion for which such General Court shall be called. "

Rep. as to U. K. 50 & 51 Vict., c. 59 ; inapplicable to India.

Governor-General and Council to make Regulations for the good order and civil government of settlement of Fort William,

not being repugnant to laws of the realm.

Proviso that same shall not be valid, until duly registered in Supreme Court.

Appeal allowed to persons in India to King in Council, who may repeal such Regulations.

Persons in England may also appeal.

A copy of all such Regulations to be affixed in the India House.

36. And be it further enacted, by the authority aforesaid, that it shall and may be lawful for the Governor-General and Council of the said United Company's settlement, at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations, for the good order and civil Government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate, or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances and regulations, not being repugnant to the laws of the realm) and to set, impose, inflict, and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances, and regulations ; but nevertheless the same, or any of them, shall not be valid, or of any force or effect, until the same shall be duly registered and published in the said Supreme Court of Judicature, which shall be, by the said new charter, established, with the consent and approbation of the said Court, which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the Court-house or place where the said Supreme Court shall be held ; and from and immediately after such registry as aforesaid, the same shall be good and valid in law ; but nevertheless, it shall be lawful for any person or persons in India, to appeal therefrom to His Majesty, his heirs or successors, in Council, who are hereby empowered, if they think fit, to set aside and repeal any such rules, ordinances, and regulations respectively, so as such appeal, or notice thereof, be lodged in the said new Court of Judicature, within the space of sixty days after the time of the registering and publishing the same ; and it shall be lawful for any person or persons in England, to appeal therefrom, in like manner, within sixty days after the publishing the same in England, and it is hereby directed and required, that a copy of all such rules, ordinances and regulations from time to time, as the same shall be so received, shall be affixed in some conspicuous and public place in the India House, there to remain and be resorted to, as occasion shall require ; yet, nevertheless, such appeal shall not obstruct, impede, or hinder the immediate execution of any rule, ordinance, or regulation, so made and registered as aforesaid, until the same

shall appear to have been set aside or repealed upon the hearing and determination of such appeal.

Rep. 55 & 56 Vict., c. 19 ; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

37. Provided always, *and be it enacted, by the authority aforesaid*, that the said Governor-General and Council shall, and they are hereby required, from time, to time, to transmit copies of all such rules, ordinances, and regulations, as they shall make and issue, to one of His Majesty's principal Secretaries of State for the time being, and that it shall and may be lawful to and for His Majesty, his heirs and successors, from time to time as they shall think necessary, to signify to the said United Company, under his or their sign manual, his or their disapprobation and disallowance of all such rules, ordinances, and regulations, and that from and immediately after the time, that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature, at Fort William in Bengal, all such rules, ordinances, and regulations shall be null and void ; but in case His Majesty, his heirs and successors shall not, within the space of two years from the making of such rules, ordinances, and regulations, signify his or their disapprobation or disallowance thereof, as aforesaid, that then, and in that case, all such rules, ordinances, and regulations, shall be valid and effectual, and have full force.

Governor-General and Council to transmit copies of Regulations to one of the Secretaries of State ;

which, if His Majesty does not signify his disallowance thereof, shall be valid.

Enacting words in italics. rep. (U. K.) 51 & 52 Vict., c. 3.

38. *And be it further enacted, by the authority aforesaid, that the Governor-General and Council for the time being, of the said United Company's settlement, at Fort William aforesaid, and the Chief Justice and other Judges of the said Supreme Court of Judicature, shall and may, and they are hereby respectively declared to be, and to have full power and authority to act as Justices of the Peace for the said settlement, and for the several settlements and factories subordinate thereto ; and to do and transact all matters and things which to the office of a Justice or Justices of the Peace do belong and appertain ; and, for that purpose, the said Governor-General and Council, are hereby authorized and empowered to hold Quarter Sessions, within the said settlement of Fort William aforesaid, four times in every year, and the same shall be at all times a Court of Record.*

Governor-General and Council, and the Chief Justice and Judges of the Supreme Court, to be Justices of the Peace.

Governor-General and Council to hold Quarter Sessions.

Rep. 55 & 56 Vict., c. 19, also rep. as to B. I. by X of 1882, s. 2 and Schedule.

Justices of the Peace.—See section 25 of Act V of 1908.

39. *And be it further enacted by the authority aforesaid, that if any Governor-General, President, or Governor or Council of any of the said Company's principal or other settlements in India, or the Chief Justice, or any of the Judges of the said Supreme Court of Judicature, to be by the said new charter established, or of any other Court in any of the said United Company's settlements, or any other person or persons who now are, or heretofore*

If Governor-General, President, etc., or any others holding office, etc., commit offences, the same may be tried and determined in the Court of King's Bench.

no. 39—40.

Punishment
on conviction.

Venue may be
laid in
Middlesex.

Where Indict-
ments or
informations
laid in the
King's Bench.

Mandamus may
issue, requiring
Judges of
Supreme Court
to examine
witnesses and
receive evidence,
etc.

Proceedings
thereon,

have been, employed by, or in the service of, the said United Company, in any civil or military station, office or capacity, or who have, or claim, or heretofore have had, or claimed, any power or authority, or jurisdiction, by or from the said United Company, or any of His Majesty's subjects residing in India, shall commit any offence against this act, or shall have been, or shall be guilty of any crime, misdemeanour, or offence, committed against any of His Majesty's subjects, or any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences, and misdemeanours, may be respectively inquired of, heard, tried, and determined, in His Majesty's Court of King's Bench; and all such persons so offending, and not having been before tried for the same offence in India, shall, on conviction in any such case, as is not especially provided for by this act, be liable to such fine or corporal punishment, as the said Court shall think fit; and, moreover, shall be liable at the discretion of the said Court, to be adjudged to be incapable of serving the said United Company, in any office, civil or military; and all and every such crimes, offences and misdemeanours as aforesaid, may be alleged to be committed, and may be laid, enquired of, and tried in the county of Middlesex.

Enacting words in italics, rep. (U. K.) 51 & 52 Vict., c. 3.

40. " And whereas the provisions made by former Laws for the hearing and determining in England offences committed in India, have been found ineffectual, by reason of the difficulty of proving in this Kingdom matters done there," be it further enacted, by the authority aforesaid, that in all cases of indictments or informations, laid or exhibited in the said Court of King's Bench, for misdemeanours or offences committed in India, it shall and may be lawful for His Majesty's said Court, upon motion to be made on behalf of the prosecutor, or of the defendant or defendants, to award a writ or writs of Mandamus, requiring the Chief Justice and Judges of the said Supreme Court of Judicature for the time being, or the Judges of the Mayor's Court at Madras, Bombay, or Bencoolen, as the case may require, who are hereby respectively authorised and required accordingly, to hold a Court, with all convenient speed, for the examination of witnesses, and receiving other proofs concerning the matters charged in such indictments or informations respectively; and, in the meantime, to cause such public notice to be given of the holding the said Court, and to issue such *summons* or other process, as may be requisite for the attendance of witnesses, and of the agents, or counsel of all or any of the parties respectively, and to adjourn, from time to time, as occasion may require; and such examination, as aforesaid, shall be then and there openly and publicly taken *vivâ voce* in the said Court, upon the respective oaths of witnesses, and the oaths of skilful interpreters, administered according to the forms of their several religions; and shall, by some sworn officer of such Court, be reduced into one or more

writing or writings on parchment, in case any duplicate or duplicates should be required by or on behalf of any of the parties interested, and shall be sent to His Majesty in his Court of King's Bench closed up, and under the seals of two or more of the Judges of the said Court, and one or more of the said Judges shall deliver the same to the agent or agents of the party or parties requiring the same; which said agent or agents, (or in case of his or their death, the person into whose hands the same shall come,) shall deliver the same to one of the Clerks in Court of His Majesty's Court of King's Bench, in the public office, and make oath that he received the same from the hands of one or more of the Judges of such Court, in India (or, if such agent be dead, in what manner the same came into his hands); and that the same has not been opened or altered since he so received it; (which said oath such Clerk in Court is hereby authorised and required to administer;) and such depositions being duly taken and returned, according to the true intent and meaning of this act, shall be allowed and read, and shall be deemed as good and competent evidence, as if such witness had been present, and sworn and examined *viâ voce*, at any trial, for such crimes or misdemeanours as aforesaid, in His Majesty's said Court of King's Bench, any law or usage to the contrary notwithstanding; and all parties concerned shall be entitled to take copies of such depositions at his own costs and charges.

to be returned
to King's Bench
under seals of
two or more
Judges.

And shall be
good evidence.

Extended by 22 and 23 Vict., c. 21, s. 16.

Mandamus.—See 24 G. III, c. 25, ss. 78, 81; and 42 G. III, c. 85, ss. 1 and 2, as to the practice of granting these writs in England. In cases of informations and indictments, see the *King v. Jones*, 8 East 31. The K. B. has awarded this writ before issue joined, *Spalding v. Mure*, T. 35 G. III, cited in *Tidd*, 843, 7th Edit. *Impey v. C. P.* 415, *Willis Interrog.* 30—(*Smoult & Ryan*, p. 55).

41. And be it further enacted, by the authority aforesaid, that in case the said Chief Justice, or Judges of the said Supreme Court of Judicature, or any of them, for the time being, shall commit any offence against this act, or be guilty of any corrupt practice, or other crime, offence, or misdemeanour, in the execution of their respective offices, it shall and may be lawful for His Majesty's said Court of King's Bench in England, upon an information or indictment laid or exhibited in the said Court, for such crime, offence, or misdemeanour, upon motion to be made in the said Court, to award such writ or writs of *Mandamus* as aforesaid, requiring the Governor-General and Council of the said United Company's settlement, at Fort William aforesaid, who are hereby respectively authorised and required accordingly, to assemble themselves, in a reasonable time, and to cause all such proceedings to be had and made, as are hereinbefore respectively directed and prescribed, concerning the examination of witnesses; and such examination, so taken, shall be returned, and proceeded upon in the same manner, in all respects,

In case of
offences
against this
act, etc.,
committed by
the Chief Justice
or Judges.

Mandamus to
be awarded to
Governor-
General and
Council, etc.

ss. 41—43, 44.

as if the several directions, hereinbefore prescribed and enacted in that behalf, were again repeated.

Extended by 22 & 23 Vict., c. 21, s. 16. Enacting words in italics rep. (U. K.) 51 & 52 Vict., s. 3.

In all proceedings in Parliament as to offences in India, Chancellor, or Speakers, may, in like manner, issue warrants for the examination of witnesses in India, which shall be proceeded upon in same manner as hereinbefore prescribed, and be good evidence in both Houses of Parliament.

42. And be it further enacted, by the authority aforesaid, that in all cases of proceedings in Parliament, touching any offences against this act, or any other offences committed in India, it shall and may be lawful for the Lord High Chancellor, or Speaker of the House of Lords, and also for the Speaker of the House of Commons for the time being, in like manner, to issue his or their warrant or warrants to the Governor-General and Council of the said United Company's presidencies of Fort William, and to the Chief Justice and Judges of the said Supreme Court of Judicature, or the Judges of the Mayor's Court at Madras, Bombay or Bencoolen, as the case may require, for the examination of witnesses; and such examination shall be returned to the said Lord High Chancellor or Speaker of the House of Lords or to the Speaker of the House of Commons respectively, and proceeded upon in the same manner, in all respects, as if the several directions, hereinbefore prescribed and enacted in that behalf, were again particularly repeated; and every such examination, returned either to the Lord Chancellor, or Speaker of the House of Lords, or to the Speaker of the House of Commons, as aforesaid, shall be deemed good and competent evidence, and shall be allowed and read in both Houses of Parliament, or either of them respectively, as occasion may require, any law or usage to the contrary notwithstanding.

Extended by 22 & 23 Vict., c. 21, s. 16. Enacting words in italics rep. (U. K.) 51 & 52 Vict., s. 3.

In all actions or suits in Law or Equity, commenced by the Company or other party, the Court may issue Mandamus to the Courts in India to take examination of witnesses, and

44. "And whereas His Majesty's subjects are liable to be defeated of their several rights, titles, debts, dues, demands, or suits, for which they have cause arising in India against other subjects of His Majesty;" Now, for preventing such failure of justice, be it further enacted by the authority aforesaid, that when, as often as the said United Company, or any person or persons whatsoever, shall commence, and prosecute any action or suit, in law or equity, for which cause hath arisen, or shall hereafter arise, in India, against any other person or persons whatsoever, in any of His Majesty's Courts at Westminster, it shall and may be lawful for such Courts respectively, upon motion there to be made, to provide and award such writ or writs, in the nature of a mandamus or commission, as aforesaid, to the Chief Justice and Judges of the said Supreme Court of Judicature, for the time being, or the Judges of the Mayor's Court at Madras, Bombay and Bencoolen, as the case may require, for the examination of witnesses as aforesaid; and such examination, being duly returned, shall be allowed and read, and shall be deemed good and competent evidence, at any trial or hearing between the parties in such cause

the same to be good evidence.

or action, in the same manner, in all respects, as if the several directions hereinbefore prescribed and enacted in that behalf, were again repeated.

Extended by 22 & 23 Vict., c. 21, s. 16.

By the 1 W. 4, c. 22, the provisions of these Sections are extended to all the Colonies; and in *Bain v. DeVetry*, 3 Dowl. 516, it was decided, that the Court of Queen's Bench had power to issue a *mandamus* to examine a witness in India, wheresoever the cause of action may have arisen. See also *Davison v. Nichol*, 1 Dowl. 220; *Savage v. Binny*, 2 Dowl. 643, Doe dem; *Crimes v. Pattison*, 3 Dowl. 35; *Wordsworth's Rules of Court*, liii. (Smoult & Ryan, p. 58.)

See now Evidence by Commission Acts, 1859 (22 & 23 Vict., c. 20) and 1885 (48 & 49 Vict., c. 74). Also rules in Chap. XXXVIII, *post*, p. 426.

45. Provided nevertheless, *and be it enacted*, that no such depositions, taken and returned as aforesaid, by the virtue of this act, shall be allowed or permitted to be given in evidence in any capital cases, other than such as shall be proceeded against in Parliament, anything in this act contained to the contrary notwithstanding.

No such depositions returned, to be allowed as evidence, in any capital cases but those proceeded against in Parliament.

Extended by 22 & 23 Vict., c. 21, s. 16: enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

(1) CHARTER ESTABLISHING THE SUPREME COURT OF
JUDICATURE AT FORT WILLIAM IN BENGAL.

Dated 26th March 1774.

cl. 1.

GEORGE THE THIRD, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth. To all to whom these presents shall come, greeting. "Whereas by an Act of Parliament, passed in the thirteenth year of our reign, reciting a Charter, bearing date at Westminster, the eighth day of January, in the twenty-sixth year of the reign of our Royal Grandfather, King George the Second, of glorious memory, by him granted to the United Company of Merchants of England, trading to the East Indies; thereby, amongst other things, constituting and establishing Courts of Civil, Criminal, and Ecclesiastical jurisdiction, at the said United Company's settlements of Madraspatnam, Bombay, and Fort William in Bengal; and that the said charter does not sufficiently provide for the due administration of justice, in such manner as the state and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall remain in the possession of the territorial acquisitions thereinbefore mentioned, do and must require; it is, among other things, enacted, that it shall and may be lawful for us, by Charter or letters patent, under the great seal of Great Britain, to erect and establish a Supreme Court of Judicature, at Fort William in Bengal aforesaid, to consist of a Chief Justice and three other Judges being barristers of England or Ireland, of not less than five years' standing, with power to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the Supreme Court of Judicature, at Fort William in Bengal, with such reasonable salaries as shall be approved of by the Governor and Council, therein for that purpose mentioned; and it was therein further enacted, that so much of the said charter granted by his said late Majesty, our Royal Grandfather, as respects or relates to the establishment of the Mayor's Court

Recited 13 Geo.
III, c. 63.

s. 13.

s. 19.

(1) NOTE.—Sir Elijah Impey, in his speech at the Bar of the House of Commons, 4th February, 1788, stated as follows:—"I shall submit to the House the following facts and observations: The original draft of this Charter was perused by the present Lord Chancellor, Lord Thurlow, then Attorney General; received alterations from Lord Loughborough, then Solicitor General; was revised by Lord Walsingham, then Chief Justice of the Common Pleas,* and by Earl Bathurst, then Lord Chancellor; that I attended all the noble Lords on the occasion, more particularly the present Lord Chancellor, and had the advantage of hearing their several reasonings on the subject;—that I have at present in my possession all their rough drafts, with their several observations, and the reports of the then Attorney and Solicitor General, in their own respective handwriting;—that from them I did acquire, and have declared, that I did acquire, a more distinct knowledge of the intention of the drawers of the charter, is most undoubtedly true." *Hans. Parl. Hist.*, Vol. 26, p. 1354.

* Chief Justice De Grey, resigned in February 1779, and was created Lord Walsingham the October following.

cl. 1-3.

at Calcutta aforesaid, in Bengal, or to the civil, criminal, or ecclesiastical jurisdiction thereof, in the said United Company's settlement there, or the subordinates thereto belonging, in case a new charter shall be granted by us, in pursuance of this Act, and shall be openly published at Fort William aforesaid, from and immediately after such publication, shall cease, determine, and be utterly void, to all intents and purposes : and it was further enacted, that during such time as the said territorial acquisitions shall remain in the possession of the said Company, the Court of Directors of the said United Company shall, and they are hereby required to, direct and cause to be paid, certain and established salaries to the said Chief Justice, and each of the Judges of such Supreme Court of Judicature, at Fort William in Bengal, as shall be by the said new charter established, that is to say, to the Chief Justice eight thousand pounds by the year, and to each of the Judges of the said Supreme Court of Judicature, at Fort William in Bengal, six thousand pounds by the year, and that such salaries shall be paid and payable, to each and every of them respectively, for the time being, out of the said territorial acquisitions in the Kingdoms of Bengal, Behar, and Orissa, such salaries to take place and commence, in respect of all such persons who shall be resident in Great Britain at the time of their appointment, from the day on which such persons shall embark from Great Britain ; and such salaries to be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever, as by the said act may more plainly and largely appear."

s. 21.

s. 22.

Establishes a Court of Record to be called the Supreme Court of Judicature, at Fort William in Bengal.

2. Now know ye, that we, upon full consideration of the premises, and of our especial grace, certain knowledge, and mere motion, have thought fit to grant, direct, ordain, and appoint, and by these presents we do accordingly, for us, our heirs and successors, grant, direct, ordain, and appoint, that there shall be, within the factory of Fort William at Calcutta in Bengal, a Court of Record, which shall be called the Supreme Court of Judicature, at Fort William in Bengal ; and we do hereby create, direct, and constitute the said Supreme Court of Judicature, at Fort William in Bengal, to be a Court of Record.

To consist of a Chief Justice and three Puisne Justices.

3. And we do further will, ordain, and appoint, that the said Supreme Court of Judicature at Fort William in Bengal, shall consist of, and be holden by and before one principal Judge, who shall be, and be called, the Chief Justice of the Supreme Court of Judicature, at Fort William in Bengal, and three other Judges, who shall be, and be called, the Puisne Justices of the Supreme Court of Judicature, at Fort William in Bengal ; which said Chief Justice and Puisne Justices, shall be barristers in England or Ireland, of not less than five years' standing, to be named and appointed, from time to time, by us, our heirs and successors, by letters patent, under our and their great seal of Great Britain ; and they shall, all and every of them, hold their said offices severally and respectively,

Their qualification.

To be appointed by the King under the Great Seal.

during the pleasure of us, our heirs and successors, and not otherwise. To act during pleasure.

By 37 Geo. iii c. 142, s. I. the number of Puisne Judges was reduced to two.

4. And it is our further will and pleasure, that the said Chief Justice, and the said Puisne Justices, shall severally and respectively be, and they are all and every of them, hereby appointed to be Justices and Conservators of the Peace and Coroners, within and throughout the said provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; and to have such jurisdiction and authority as our Justices of our Court of King's Bench have, and may lawfully exercise within that part of Great Britain called England, by the common law thereof; and we further will and ordain, that all judgments, rules, orders, and acts of authority, or power whatsoever, to be made or done by the said Supreme Court of Judicature, at Fort William in Bengal, shall be made or done, by and with the concurrence of the said four Judges, or so many, or such one of them, as shall be on such occasions, respectively assembled or sitting as a Court, or of the major part of them so assembled and sitting: provided always, that in case they shall be equally divided, the Chief Justice, or, in his absence, the senior Judge present, shall have a double or casting voice. To be Justices of the Peace and Coroners in Bengal, Behar and Orissa. And to have such authority as the Justices of the King's Bench in England. The four, or the majority, concur. Chief or senior to have a casting voice.

Justices of the Peace.—See now section 25 of Act V of 1908.

5. And we do further grant, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall have and use, as occasion may require, a seal, bearing a device and impression of our royal arms, within an exergue or label surrounding the same, with this inscription, The Seal of the Supreme Court; and we do hereby grant, ordain, and appoint, that the said seal shall be delivered to, and kept in the custody of, the said Chief Justice, and in case of vacancy of the office of Chief Justice, the same shall be delivered over, and kept in the custody of such person, who shall then be senior Puisne Judge during such vacancy; and we do hereby grant, ordain, and appoint, that whensoever it shall happen, that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed, shall be vacant, the said Supreme Court of Judicature, at Fort William in Bengal, shall be, and is hereby authorised and empowered, to demand, seize, and take the said seal, from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession. Court to have a seal to be kept by the Chief Justice or by the Senior Puisne Judge. When Court may demand and seize the seal.

6. And we do further grant, ordain, and appoint, that all writs, summonses, precepts, rules, orders, and other mandatory process, to be used, issued, or awarded by the said Supreme Court of Judicature, at Fort William in Bengal, shall run, and be in the name and style of us, or of our heirs and successors, and shall be sealed with the seal of the said Supreme Court of Judicature, at All writs, etc., issued by the Court, to be in the King's name, and attested by the Chief Justice, etc.

cl. 6-9.

Fort William in Bengal, and shall have and bear the attestation of the Chief Justice, or, in the vacancy of the said office, of the senior of the three Puisne Justices, and shall be signed by the proper officer, whose duty it shall be, according to the arrangement herein-after provided, to prepare and make out such process.

Chief Justice
to receive a
salary of £8,000
and Puisne
Justices £6,000
by the year.

Rank of Chief
Justice and
Puisne Justices.

7. And we do further grant, ordain, appoint, and declare, that the said Chief Justice, and the said Puisne Justices, shall and may, and so long as they hold the said offices respectively, shall be entitled to have and receive respectively, the salaries in and by the said recited act of Parliament provided for that purpose ; that is to say, the Chief Justice eight thousand pounds by the year, and the three Puisne Justices six thousand pounds by the year, each of them to be paid and payable in manner and form as is therein specified and directed ; and we do hereby give and grant to our said Chief Justice, rank and precedence above and before all our subjects whomsoever, within the provinces of Bengal, Behar, and Orissa, excepting the Governor-General for the time being, of the presidency of Fort William in Bengal, and excepting all such persons as by law and usage take place in England before our Chief Justice of our Court of King's Bench ; and we do hereby also give and grant to each of our said Puisne Justices respectively, according to their respective priority of nomination, rank and precedence, above and before all our subjects whomsoever, within the said provinces of Bengal, Behar, and Orissa, excepting the said Governor-General, our said Chief Justice of our said Supreme Court of Judicature, at Fort William in Bengal, and all and every such member or members of the Supreme Council there, as shall respectively, by priority of nomination, be senior or seniors to such respective Puisne Justice or Justices, and also excepting all such persons as by law and usage take place in England before our Justices of the Court of King's Bench.

Rules as to the salaries, pensions and leave of the Chief Justice and Judges are now made by the Secretary of State under 24 and 25 Vict., c. 104, s. 6, see *post*, p. 60.

Elijah Impey,
Esq., to be
the first Chief
Justice ; Robert
Chambers,
Stephen Caesar
LeMaistre, and
John Hyde,
Esqrs., the first
Puisne Justices.

8. And we do hereby constitute and appoint Elijah Impey, of Lincoln's Inn, Esq., first Chief Justice ; Robert Chambers, of the Middle Temple, Stephen Caesar LeMaistre, of the Inner Temple, John Hyde, of Lincoln's Inn, Esqrs., to be the first Puisne Justices of our said Supreme Court of Judicature at Fort William in Bengal ; the said Elijah Impey, Robert Chambers, Stephen Caesar LeMaistre, and John Hyde, and every of them, being barristers in England of five years' standing, and upwards.

Sheriff at Fort
William to con-
tinue such,
until appoint-
ment of
another.

9. And we do further, for us, our heirs and successors, grant, ordain, and appoint, that the person who shall be the Sheriff at Fort William in Bengal, at the time of the publication of this our charter, in manner hereinafter directed, shall be and continue the Sheriff, until another shall be duly appointed and sworn in to the

cl. 9.

said office ; and we do further, for us, our heirs and successors, grant, direct, and appoint, that the said Supreme Court of Judicature ; at Fort William in Bengal, shall, upon the first Tuesday of December, in every year, nominate three persons, resident in the town of Calcutta, or the precincts thereof, to the Governor-General and Council, or the major part of them, who within three days after such nomination, shall appoint one of the said three persons to serve the office of Sheriff, for the year ensuing to be computed from the twentieth day of December next after such appointment ; which Sheriff shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute his office, and the oath of allegiance before the Governor-General, or in his absence, the senior member of the Council there present, who are hereby respectfully authorised to administer the same ; and shall continue in such office during the space of one whole year, to be computed from the said twentieth day of December, and until another shall be duly appointed and sworn into the said office ; and in case such Sheriff shall die in his office, or depart from the provinces of Bengal, Behar, and Orissa, then another person shall and may, as soon as conveniently may be, after the death or departure of such Sheriff, be, in like manner, nominated, appointed, and sworn in as aforesaid, and shall continue in his office for the remainder of the year, or until another Sheriff shall be duly appointed and sworn into the said office ; and we do further order, direct, and appoint, that the said Sheriff, and his successors, shall, by themselves or their sufficient deputies, to be by them appointed and duly authorised, under their respective hands and seals, and for whom he and they shall be responsible, during his or their continuance in such office, and he and they are hereby authorised to execute all the writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of Judicature, at Fort William in Bengal, and make return of the same, together with the execution thereof, to the said Supreme Court of Judicature, at Fort William in Bengal, and to receive and detain in prison such persons as shall be committed to him for that purpose, by the said Supreme Court of Judicature, at Fort William in Bengal, and by the Chief Justice and Justices respectively ; and we further direct, ordain, and appoint, that whenever the said Supreme Court of Judicature, at Fort William in Bengal, shall direct or award any process against the said Sheriff or award any process, in any cause, matter, or thing, wherein the said Sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge, which would be allowed against any Sheriff, in that part of Great Britain called England, cannot by law execute the same, in every such case, the said Supreme Court of Judicature, at Fort William in Bengal, shall name and appoint some other fit person to execute and return the same ; and the said process shall be directed to the said person so named for that purpose, and the cause

Mode of such appointment, in future.

Sheriff to take oath of office before Governor-General in Council, etc.

To continue for one year.

Provision in case of death, etc., while in office.

Sheriff to execute duties by himself or deputy.

Mode of proceeding when the Sheriff shall be a party, etc.

cl. 9—11.

of such special proceedings, shall be suggested and entered on the records of the same.

S. 9 still in force.

Except the provision for the continuance in office of the first Sheriff, and except that official oaths have been abolished by the Indian Oaths Act (X of 1873), so that the Sheriff is no longer required to take either the oath of office or of allegiance, this section is in all respects still in force.

No provision similar to that in 3 Geo. I. c. 15, s. 8.

There is no provision in the Charter or elsewhere similar to that in 3 Geo. I. c. 15, s. 8, by which on the death of the Sheriff during his year of office, the Under-Sheriff or Deputy Sheriff appointed by him is continued in office with authority to execute the duties thereof in the name of the deceased Sheriff until the appointment of another Sheriff. Nor is there any provision for determining the office of Sheriff during his year of office, otherwise than by his death, or departure from the Provinces of Bengal, Behar and Orissa.

Determination of office by death, etc.

By Insolvency.

In 1858 the Sheriff having intimated that he had become insolvent and would be obliged to seek the benefit of the Insolvent Act, another Sheriff was appointed during his year of office. This suggests the question whether the Sheriff appointed under the Charter "for the space of one whole year, and until another shall be duly appointed and sworn into said office," holds his office during the pleasure of the Government in like manner as the Sheriff in England holds his office during the pleasure of the Crown. (B)

Court to appoint clerks and officers, with such reasonable salaries as Court shall appoint, and Governor-General and Council approve.

10. And we do further authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, from time to time, as occasion may require, to appoint so many and such clerks, and other ministerial officers, as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities which are, and shall be, granted and committed to the said Supreme Court of Judicature, at Fort William in Bengal, by these our letters patent; and it is our further will and pleasure, and we do hereby, for us, our heirs and successors, give, grant, direct, and appoint, that all and every the officers and clerks, to be appointed as aforesaid, shall have and receive respectively; such reasonable salaries, as the said Supreme Court of Judicature, at Fort William in Bengal, shall appoint, for each office and place respectively, and as the Governor-General, and Council, appointed, constituted, and created by the act of Parliament hereinbefore mentioned, shall approve of: provided always, and it is our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid, shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices.

Such officers to reside within the jurisdiction of the Court.

See Letters Patent of 1865, ss. 4 and 8, *post*.

Court to approve and admit Advocates and Attornies at Law, who are to plead and act for the suitors; removable on reasonable cause.

✓ 11. And we do hereby further authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, to approve, admit, and enrol such and so many Advocates and Attornies at Law, as to the said Supreme Court of Judicature at Fort William in Bengal, shall seem meet, who shall be Attornies of Record, and shall be, and are hereby authorised to appear and plead, and act for the suitors of the said Supreme Court of Judicature, at Fort William in Bengal; and the said Advocates and Attornies, on reasonable

cl. 11—12.

cause, to remove ; and no other person or persons whatsoever, but such Advocates or Attornies, so admitted and enrolled, shall be allowed to appear and plead, or act in the said Supreme Court of Judicature, at Fort William in Bengal, for or on the behalf of such suitors, or any of them.

No other persons to be allowed to appear and plead, etc.

See Letters Patent of 1865, ss. 9 and 10, *post*.

12. And we do hereby further authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, to settle a table of the fees to be allowed to such Sheriff, and all other the officers, clerks, and Attornies aforesaid, for all and every part of the business to be done by them respectively ; which fees, when approved by the said Governor and Council, to whom we hereby give authority to review the same, the said Sheriff and other officers, clerks, and attornies, shall and may lawfully demand and receive ; and we do further authorise the said Supreme Court of Judicature at Fort William in Bengal, with the like concurrence of the said Governor and Council, from time to time, to vary the said table of fees, as there shall be occasion ; and it is our farther will and pleasure, and we do hereby require and enjoin the Chief Justice, and the said Puisne Justices, and each of them respectively, within one year after these our letters patent shall have been published at Fort William in Bengal, aforesaid, and within one month from the said settling and allowance of the said table of fees, to certify, under their several hands and seals, and to transmit to us, our heirs and successors, a full and true account of the several offices and places, and officers and clerks, and of their salaries, severally and respectively, and a true copy of the said table of fees, together with the approbation of the said Governor and Council, and also any variation of the said table, to be made as aforesaid, within one month after the same shall have been so varied ; and we further direct, ordain and appoint, that the said table, and the said alteration and variations thereof, if any alteration or variation shall be made, shall be hung up in some conspicuous part of the hall or place where the said Supreme Court of Judicature, at Fort William in Bengal, shall be publicly holden.

A table of fees, to be settled by the Court, and approved by the Governor-General and Council.

Which they may also vary.

Court to transmit an account of Offices, Officers and salaries and copy of Table of fees, to His Majesty.

Table of fees to be hung up in Court.

See 24 and 25 Vict., c. 104, s. 15, *post*.

13. And we do further direct, ordain, and appoint that the said Supreme Court of Judicature, at Fort William in Bengal, may and shall have power and jurisdiction, and is hereby authorised to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise, happen, be brought, or promoted, upon or concerning any trespasses or injuries, of what nature or kind soever, or any debts, duties, demands, interests, or concerns, of what nature or kind soever, or any rights, titles, claims, or demands of, in, or to, any houses, lands, or other things, real or personal, in the several provinces or districts called Bengal,

Court to have power and jurisdiction in all actions, arising in Bengal, Behar and Orissa.

cl. 18.

And all pleas real, personal or mixt, the causes of which arise against the Company, and the Mayor and Aldermen, and against any subject resident in Bengal, etc., or who shall have resided, or shall have debts, etc., there, and against executors and administrators of such subjects,

and against any other person employed by or in the service of the Company, or Mayor and Aldermen, or any other subject. But not against any person never resident there, or then in Great Britain or Ireland. Unless action commenced within two years after cause arose, and exceeding Rs. 30,000.

And jurisdiction in all such actions against all persons whatsoever, inhabitants of India, residing in Bengal, etc., upon any contract in writing with a subject where the cause shall exceed 500 current rupees, and when such inhabitant shall have agreed that the matter may be determined by the said Court. Mode of proceeding in such actions.

Plaint.

Behar, and Orissa, or touching the possession, or any interest or lien, in or upon the same; and all pleas, real, personal or mixt, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the said United Company of merchants trading to the East Indies, and against the said Mayor and Aldermen of Calcutta, at Fort William in Bengal, and against any other of our subjects, who shall be resident within the said provinces, districts, or countries, called Bengal, Behar, and Orissa, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same; and against the executors and administrators of such of our subjects, and against any other person, who shall, at the time of such action being brought, or at the time when any such action shall have accrued, be or have been employed by or be or have been, directly or indirectly, in the service of the said United Company, or of the said Mayor and Aldermen, or of any other of our subjects: Provided always, that it shall not be competent to the said Supreme Court of Judicature, at Fort William in Bengal, to try or determine any suit or action against any person who shall never, have been resident in the provinces of Bengal, Behar, and Orissa, or any one of them, nor against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland, shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than thirty thousand rupees; and the said Supreme Court of Judicature at Fort William, in Bengal, shall have the like power and jurisdiction, and is hereby authorised to hear, examine, try, and determine, all such causes, actions, and suits as aforesaid, arising, growing, and to be brought promoted against every other person or persons whatsoever, inhabitants of India, residing in the said provinces, districts, or countries of Bengal, Behar, and Orissa, upon any contract or agreement in writing, entered into by any of the said inhabitants with any of His Majesty's subjects, where the cause of action shall exceed the sum of five hundred current rupees, and when such inhabitant shall have agreed in the said contract, that, in case of dispute, the matter shall be determined in the said Supreme Court of Judicature at Fort William in Bengal; and to the end that justice may be administered in the said Supreme Court of Judicature, at Fort William in Bengal, with all convenient speed and certain effect, our will and pleasure is, and we do hereby further grant, ordain, and appoint, that upon any such cause of action as aforesaid, it shall be lawful and competent for any person whatsoever, by himself or his lawful attorney, admitted and enrolled as aforesaid, to prefer to the said Supreme Court of Judicature, at Fort William in Bengal, and file of record in the said Supreme Court of Judicature at Fort William in Bengal, a plaint or bill in writing, containing the cause of action, or complaint, whereupon the said Supreme Court

of Judicature, at Fort William in Bengal, shall, and is hereby authorised to award and issue a summons, or precept in nature of a summons, in writing, to be prepared in manner above-mentioned, directed to the said Sheriff, and containing a short notice of the cause of action set forth in the said plaint, and commanding the said Sheriff to summon the person against whom the said plaint shall have been filed, to appear at some certain time and place therein to be specified, to answer the said plaint, which said precept, and the execution thereof, the said Sheriff shall duly return to the said Supreme Court of Judicature at Fort William in Bengal; and the person or persons so summoned, shall accordingly appear, and may plead such matter in abatement, bar, or other avoidance of the said plaint, or otherwise, as he or they shall be advised; and after such appearance, the Supreme Court of Judicature at Fort William in Bengal, shall proceed, from time to time, giving reasonable days to the parties, to hear their respective allegations as justice may require, and examine the truth thereof, upon the oath or oaths of such competent and credible witnesses as they shall produce respectively; to which end we hereby authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, at the request of either of the said parties, to award and issue a summons, or precept in the nature of a summons, to be prepared in manner beforementioned, directed to every one of such witnesses, commanding him or her to appear, at a time and place to be specified in such summons, to depose his or her knowledge touching the suit so depending between the parties, naming them, and specifying at whose request such summons shall have issued; and upon the appearance of the said witnesses, or any of them, the said Supreme Court of Judicature at Fort William in Bengal, may, and is hereby required to order and award to them and each of them, such reasonable sum of money, for his, her or their expenses, as the said Supreme Court of Judicature, at Fort William in Bengal shall think fit, whether such witnesses shall be examined or not, the same to be paid forthwith, by the party at whose request the said summons shall have issued; and if the said sum of money so ordered and awarded, shall not be forthwith paid or secured to such witness, to the satisfaction of the Supreme Court of Judicature at Fort William in Bengal, the party to whom it shall belong to pay the same, shall not only lose the benefit of such witness's testimony, but shall be compelled to pay him or her the money so ordered and awarded, by such ways and process, as are hereinafter provided, for levying and enforcing the payment and satisfaction of money recovered by judgments of the said Court; and the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorised and empowered to administer to such witnesses and others, whom they may see occasion to examine, proper oaths and affirmations, that is to say, to such persons as profess the Christian

Summons directed to Sheriff,

who shall return same.

Appearance and Plea.

Cause to be heard and witnesses examined.

Subpoena to witnesses.

Court to order reasonable expenses to be paid them forthwith, by the party summoning.

Consequences of default,

and how payment thereof is to be enforced.

Witnesses to be sworn.

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Quakers to affirm.

Others, oaths most binding on their consciences.

Evidence to be reduced into writing, and signed.

Witnesses refusing to be sworn or affirm, to be punished as for a contempt.

religion, oaths upon the Holy Evangelists of God, and to Quakers, affirmations according to the form used in England for that purpose; and to others, oaths in such manner and form as the Supreme Court of Judicature, at Fort William in Bengal, shall esteem most binding upon their consciences respectively; and the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorised and required to reduce, or cause the said depositions to be reduced into writing, and subscribed by the several witnesses, with their name or other mark, and to file the same of record; and in case any person or persons so summoned, shall refuse, or wilfully neglect to appear and be sworn, or, being Quakers, to affirm, and be examined, and subscribe their depositions, as the Supreme Court of Judicature, at Fort William in Bengal, shall appoint, the Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered to punish such person or persons, so refusing or wilfully neglecting, as for a contempt, by fine, imprisonment, or other corporal punishment, not affecting life or limb.

Jurisdiction.—See 39 and 40 Geo. iii, c. 79, s. 20, by which the jurisdiction of the Supreme Court was extended to Benares and to all factories, districts and places subject to the Presidency of Fort William in Bengal. (B.)

See now Letters Patent of 1865, *post*.

A Judge sitting as Insolvency Commissioner issued a subpoena to a person at Benares directing him to attend here to give evidence, and on a later date directed a warrant to issue for his arrest, he not having complied with the subpoena. On appeal against these two orders, the question of jurisdiction was on the 26th and 27th August 1889 argued at length (see appeal Minute book). An affidavit having in the meantime arrived as to the man's state of health the orders were set aside—and as to the question of jurisdiction the Court (Petheram, C.J., and Pigot, J.) was of opinion that it was a question of very great difficulty and desired to have the opinion of Mr. Justice Wilson who was then absent; so the matter stood over till after the vacation, but never came on again: In the matter of Ramkisson (see note under cl. 18 of the Letters Patent of 1865, *post*, p. 91).

Expenses of witnesses.—O. 16, r. 2, C. P. C., which requires the expenses of witnesses to be paid before the summons is granted, is by O. 49 r. 3 made inapplicable to the High Court, probably with the object of enabling the Court to follow its own practice of requiring the expenses of a witness, as indicated in the margin of the summons, to be paid to him direct by the suitor or his attorney, instead of being deposited in Court in the first instance. In accordance with this practice, the first day's expenses are tendered to the witness with the summons. The daily allowance for each subsequent day is also expected to be prepaid. If not prepaid, or secured to the satisfaction of the Court, the witness is not compelled to give his evidence. But where a witness, who has been in attendance for more than one day, is not examined, either because of the nonpayment of his daily allowance, or because his evidence has become unnecessary, it has been considered that the amount due to him is irrecoverable except by suit. *Quære.*—Whether, in such a case, payment may not be summarily enforced, as provided in this section of the old Charter of Justice? (B.)

See Chap. XXXVI, r. 90, *post*, p. 389. Witnesses may apply to enforce ment.

Oaths and Affirmations.—See Preface, p. xxi, and Indian Oaths Act (X of 1873).

14. And we do further give the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority, upon examining and considering the several allegations of the said parties to such suit, or of the complaint alone, in case the defendant should make default after appearance, or say nothing, or confess the plaintiff, and the depositions of the witnesses produced, sworn, and examined in manner above-mentioned, to give judgment and sentence, according to justice and right; and also to award and order such costs to be paid, by either or any of the parties to the other or others, as they, the said Court, shall think just.

Court to give judgment, on hearing parties or complainant alone and depositions of witnesses, if defendant make default after appearance, or say nothing or confess plaintiff.

Costs to be awarded.

15. And we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to award and issue a writ or writs of execution, to be prepared in manner before-mentioned, and directed to the said Sheriff for the time being, commanding him to seize and deliver the possession of houses, land, or other things, recovered in and by such judgment, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party against whom such writs shall be awarded, as will be sufficient to answer and satisfy the said judgment or award, or to take and imprison the body of such party or parties, until he or they shall make such satisfaction, or to do both as the case shall require; and we do further order, direct, and appoint, that the several debts to be seized, as aforesaid, shall from the time the same shall be extended and returned into the said Supreme Court of Judicature, at Fort William in Bengal, be paid and payable in such manner and form as the said Supreme Court of Judicature, at Fort William in Bengal, shall appoint, and no other; and such payment, and no other, shall, from thenceforth, be an absolute and effective discharge for the said debts, and every of them respectively; and we do, hereby, further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to make such further and other interlocutory rules and orders, as the justice of the proceeding may seem to require; and in case the party so summoned as aforesaid shall not appear upon the return of such summons or precept as aforesaid, according to the exigence thereof, we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to award and issue a writ or warrant, to be prepared in manner above-mentioned, and directed to the said Sheriff, commanding him to arrest and seize the body of such person so making default, and to have his said body, at such time and place as shall be specified in the said writ for that purpose, before the said Supreme Court of Judicature, at Fort William in Bengal, to answer the said plaintiff; and the said Supreme Court of Judicature, at Fort William in Bengal, may, if it should be thought proper, by the said writ, authorize the said Sheriff to take such bail, for the appearance of the said defendant,

Execution to issue,

to seize and deliver possession of houses, land, etc., recovered, or to levy amount, or costs recovered, by

seizing and selling houses, lands, debts, etc., sufficient to satisfy judgment or to take, ca. sa.

Ca. sa. and fi. sa. at same time.

Debts so seized, after extended and returned to be paid as the Court shall appoint. Such payment, and no other, to be effective discharge.

Court to make such interlocutory orders, as shall seem fit.

In failure of appearance on return of summons.

Capias of contempt may issue,

authorizing Sheriff to take bail for appearance,

cl. 15.

and thereupon
defendant may
plead, etc.

If cause of ac-
tion be personal
and ex-
ceed 100 cur-
rent rupees,

or case of enor-
mous personal
wrong, verified
by affidavit,

Capias may
issue in lieu of
summons, to
arrest defend-
ant.

Bail to the
Sheriff.

Bail to the
Action.

If Summons or
Capias be re-
turned non est
inventus,

as the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit to direct ; and upon such appearance the said defendant may plead, in such manner as if he had appeared upon the return of the summons ; and if the cause of action contained in such plaint shall be personal, and of more value than one hundred current rupees, and the plaintiff, by affidavit, or, being a Quaker, by affirmation in writing, to be filed of record, shall satisfy the said Supreme Court of Judicature, at Fort William in Bengal, that the defendant is justly and truly indebted to him in a greater sum than one hundred current rupees, or if he shall, by like affidavit or affirmation to be filed as aforesaid, verify, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, a case of such enormous personal wrong, as in the judgment of the said Supreme Court of Judicature, at Fort William in Bengal, requires such security, the said Supreme Court of Judicature, at Fort William in Bengal, shall, and is hereby authorized and empowered to, award and issue, in lieu of the summons aforesaid, a writ or warrant, to be prepared in manner above mentioned, and directed to the said Sheriff, commanding him to arrest and seize the body of such defendant, and to have his said body, at a time and place, in the said writ to be specified, before the said Court, to answer the said plaint, and to give sufficient security, to be approved of by the said Supreme Court of Judicature, at Fort William in Bengal, that he will stand to, and perform, the judgment of the said Supreme Court of Judicature, at Fort William in Bengal, upon the premises, and pay all such sum or sums of money, as shall thereby be awarded ; and the said Supreme Court of Judicature, at Fort William in Bengal, may, in and by the said writ or warrant, authorise the said Sheriff, to deliver the body of such defendant so arrested, to sufficient bail, upon their sufficient recognizance and security given, that such defendant shall appear, at a time and place mentioned in such writ or warrant, and, in all things, perform and fulfil the exigence thereof ; and upon the appearance of such defendant in and before the said Supreme Court of Judicature, at Fort William in Bengal, we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to commit him to prison, to the said Sheriff, unless or until he shall give security to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, to perform the judgment thereof, and pay all such sum or sums of money as shall be awarded thereby ; which security we hereby empower the said Court to take, and thereupon to deliver the body of the said defendant upon bail. And if the said Sheriff shall return to either of the said writs, of summons or capias, that the defendant is not to be found within the jurisdiction of the said Supreme Court of Judicature, at Fort William in Bengal, and the plaintiff shall, by affidavit, or being a Quaker, by affirmation in writing, or otherwise, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, make

proof, verifying his demand, we do hereby grant, ordain, and appoint that the said Supreme Court of Judicature, at Fort William in Bengal, shall and may award and issue a writ of Sequestration, to be prepared in manner above-mentioned, and directed to the said Sheriff, commanding him to seize and sequester the houses, lands, goods, effects, and debts of such defendant, to such value as the said Supreme Court of Judicature, at Fort William in Bengal, shall think reasonable and adequate to the said cause of action, so verified as aforesaid, and the same to detain till such defendant shall appear and abide such order of the said Supreme Court of Judicature, at Fort William in Bengal, as if he had appeared on the former process; and the said Supreme Court of Judicature, at Fort William in Bengal, shall and is hereby authorized and empowered, according to their discretion, either to cause the said goods to be detained in specie, or to be sold; and to give a day to such defendant, by Proclamation in open Court, from time to time, not exceeding two years in the whole; and if such defendant shall not appear on the last day, which the said Court in their discretion shall think proper to give, it shall be lawful, and the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorised, to proceed, *ex parte*, to hear, examine, and determine the said plaint and cause, and give such judgment therein, and award and order such costs as aforesaid; and if judgment shall in such case pass for the plaintiff, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered to award and issue a writ to the said Sheriff, to be prepared in manner above-mentioned, commanding him to sell the said houses, lands, goods, effects and debts, so seized and sequestered, and to make satisfaction out of the produce thereof to the plaintiff, for the duty so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person, in whose possession the said effects were seized, or otherwise to reserve them for the said defendant, as occasion shall require; and if such effects shall not be sufficient to produce the sum so to be recovered, and the said costs, the said Supreme Court of Judicature, at Fort William in Bengal, is further empowered to award and issue such process of execution, for the deficiency, as is heretofore provided for levying money recovered by judgment and costs; and if judgment shall, in such last-mentioned case, pass for the defendant, the said Supreme Court of Judicature, at Fort William in Bengal, is authorized and empowered to award and order the costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, to be paid by the said plaintiff to the said defendant, or his attorney, or the person in whose possession the said effects were seized, and the same shall be levied by such process as is herein provided, for levying costs; and the said debts, from the time of their being so seized and extended and returned into Court, shall

and demand
verified.

Sequestration
to issue to seize
houses, lands,
effects, and
debts, etc.,
adequate to:
the cause of ac-
tion so verified.

to abide order
on appearance.

Proclamations
for non-appear-
ance.

Hearing *ex-
parte*.

On judgment
for plaintiff.

Execution to
issue to sell
houses, lands,
effects and
debts so se-
questered.

If judgment for
defendant.

Costs, expenses
of sequestra-
tion and
damages, to be
awarded to
him.

How to be
levied.

cl. 15—16.

Debts so sequestered, how payable.

Recital of Charter 26 G. 2 as to form of proceedings, either where the Company were plaintiffs or defendants.

Governor and Council to appoint an Attorney, to act on behalf of the Company.

On plaint filed against the Company.

Summons to issue to be served on their Attorney.

If no appearance.

be payable, in such manner, as the said Supreme Court of Judicature, at Fort William in Bengal, shall direct, and no other.

16. "And whereas, in and by the said charter, made and granted by our said Royal Grandfather, King George the Second, on the eighth day of January, in the twenty-sixth year of his reign, it is among other things provided, that in case of actions or suits against the said United Company, it should be lawful for the Court thereby established to issue their summons to the Governor, or President and Council, at Fort William in Bengal, to appear for the said United Company, with further power to issue such process against the said Company and their estate and effects, as should be necessary to compel the appearance of the said Company, and to raise and levy upon their goods, estate, or effects, the debt or damages, together with such costs of suit as should be awarded by the said Court, and that in case of any action or suit to be brought by the said Company against any other person, it should be lawful for the said Governor, or President and Council, to appear and act for the said Company; and in case of judgment given against the said Company, and costs awarded, the same should be levied by the said Court upon the goods and effects of the said Company, as by the said charter may more fully appear:" Now we, meaning also to extend the powers and authorities, hereby given and granted, for the due administration of justice in the most beneficial manner, to all our loving subjects, in the said provinces, districts, or countries of Bengal, Behar, and Orissa, do grant, ordain, and appoint, that the said Governor and Council, or their successors, shall and may, from time, to time by their sufficient warrant, to be filed of record, name and appoint some sufficient person, resident in the said town of Calcutta, to be the Attorney of the said United Company, who shall remain and act as Attorney to the said United Company, so long as he shall reside in Calcutta, or until some other fit person, there resident, shall be appointed in his place, in manner above-mentioned; and if any such plaint as aforesaid, shall be filed in the said Supreme Court of Judicature, at Fort William in Bengal, against the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to award and issue such summons or precept as aforesaid, directed to the said Sheriff, commanding him to summons the said United Company, by their said Attorney to appear at a time and place therein to be specified, to answer the said plaint, and the said Sheriff shall serve the same upon the said Attorney, and the said Attorney, shall thereupon appear for the said Company; and if the said United Company shall not appear in manner aforesaid, upon the return of the said writ, the said Supreme Court of Judicature, at Fort William in Bengal, may and is hereby authorized, upon such default, to award and issue a writ, to be prepared in manner before mentioned, and directed to the said Sheriff, commanding him to seize and

sequester such, and so much of the estate and effects of the said Company, as upon the circumstances, the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit, to compel the appearance of the said Company at the time and place which shall be specified for that purpose, in such writ of sequestration; and for default of appearance, upon the return of such last-mentioned writ, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to issue other such writ or writs of sequestration, from time to time, till the said Company shall duly appear; and after such appearance, the said Supreme Court of Judicature, at Fort William in Bengal, shall and may proceed to hear, examine, try, and determine the said action and suit, in manner before mentioned; and if judgment shall be given in such action or suit against the said Company, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to award and order reasonable costs, to be paid by the said Company, and to cause the debt, or damages and costs, so awarded, to be raised and levied out of the estates, goods, and chattels of the said Company, in such manner as is hereinbefore provided, for execution to be had in other actions and suits; and if the said Governor and Council, shall refuse or neglect, at any time to make such Attorney, the said Supreme Court of Judicature, at Fort William in Bengal, are hereby empowered and authorized, to name an Attorney for the said United Company, against whom process shall in like manner be awarded; And the said United Company, may also sue in the said Supreme Court of Judicature, at Fort William in Bengal, in the same manner, and to the same effect, as other persons hereinbefore mentioned, and if judgment should be given against the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, may order reasonable costs to be paid by them to the defendant, and to be raised and levied out of their lands, houses, debts, estates, goods and chattels, in such manner as is herein provided, for execution of judgments on other occasions; And if the said United Company, after four sequestrations, and after the expiration of two years from the service of the summons above mentioned, shall not appear, then the said Supreme Court of Judicature, at Fort William in Bengal, may and is hereby required, if the plaintiff shall, by affidavit, or, being a Quaker, by affirmation in writing, or otherwise, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, make proof, verifying his demand, to proceed, hear, examine, try and determine the said plaint and cause, and to give such judgment therein, and award such costs as aforesaid; and in case the said judgment shall pass for the plaintiff, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered to award and issue a writ to the said Sheriff, to be prepared in manner before mentioned, commanding him to sell the goods and effects, so seized and sequestered, and to

Sequestration to issue.

And so from time to time, till appearance. After appearance.

If judgment against Company.

debt, etc., to be levied as in other actions.

And if Governor and Council refuse to appoint Attorney, the Court may appoint one.

Where the Company are plaintiffs.

If judgment against them liable to costs.

If no appearance after four sequestrations, and after two years from service of summons,

and plaintiff make proof verifying his demand, cause to be heard and Court to give judgment.

and if for plaintiff, A. fa. to issue to sell effects sequestered,

[d. 10-17.

and for residue
if insufficient.

If judgment for
Company, costs
and expenses
of sequestration
and damages,
to be awarded
to them, etc.

make satisfaction out of the produce thereof to the plaintiff, for the duty so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person in whose possession the said effects were so seized, to and for the use of the said United Company; and if such effects are not sufficient to produce the sum so to be recovered, and the said costs, the said Supreme Court of Judicature, at Fort William in Bengal, is further empowered to award and issue such process of execution, for the deficiency, as is heretofore provided for levying money recovered by judgment and costs; and if judgment shall, in any case, pass for the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered, to award and order costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, being first taxed, ascertained, and assessed by the proper officer, to be paid by the said plaintiff to the person in whose possession the said effects were seized, to and for the use of United Company, and the same shall be levied by such process as is hereinbefore provided for levying costs.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

See 21 and 22 Vict., c. 106, by which Act the Government was transferred from the Company to the Crown, and by s. 65 of which the Secretary of State may sue and be sued as a body corporate and by which all persons may have and take the same suits, remedies and proceedings against the Secretary of State as they could have done against the Company. See *Rodricks v. the Secretary of State* (1912), 16 C. W. N., 747, where the previous cases against the Secretary of State are discussed, and see note under cl. 12 of the Letters Patent of 1865, *post*, p. 84.

Attorney of the Company.—As to the Government Solicitor. See Civil Procedure Code, Act V of 1908, s. 2. O. 33, r. 6; and O. 27.

The Government Solicitor, on appointment, files a warrant of attorney from the Governor-General, authorising him to act on behalf of the Secretary of State in all suits and matters in the High Court. He does not file a separate warrant in each suit or matter.

Where agree-
ments in writ-
ing between
inhabitants of
India and
British subjects,
that matter
may be deter-
mined in the
Supreme Court
(cause of action
exceeding 500
current rupees)
and suits shall
be brought
in the Courts in
the provinces.

17. "And whereas contracts or agreements in writing may be entered into by some of the inhabitants of India, residing in the said provinces or districts of Bengal, Behar, and Orissa, or some of them, or some part thereof, with our British subjects, or some of them, wherein such inhabitant or inhabitants may agree, that, in case of dispute, the matter should be heard and determined in the said Supreme Court of Judicature, at Fort William in Bengal, and whereupon a cause or causes of action may arise, exceeding in value, respectively, the sum of five hundred current rupees, and suits may be brought thereupon in some of the Courts of Justice, already established in the said provinces or districts;" We do hereby further grant, ordain, establish, and appoint, that in such cases it shall be lawful for either party, before or after sentence or judg-

ment pronounced therein by him, her, or their humble petition, suggesting such agreement in writing as aforesaid, and verifying the same upon oath, to appeal to the said Supreme Court of Judicature, at Fort William in Bengal, and upon such petition preferred and filed of record in the said Supreme Court of Judicature, at Fort William in Bengal, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby authorized to, award and issue a writ or precept, to be prepared in manner and form above mentioned, directed to the other party or parties commanding him, her, or them, immediately to surcease proceeding further in such suit or suits, and thereupon such Supreme Court shall determine, thereupon according to right and justice, in like manner as if no proceedings had been in such other Court of Justice.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

See Letters Patent of 1865, cl. 13, *post*.

18. And it is our further will and pleasure, and we do hereby for us, our heirs and successors, grant, ordain and establish, that the said Supreme Court of Judicature, at Fort William in Bengal, should also be a Court of Equity, and shall and may have full power and authority to administer justice, in a summary manner, as nearly as may, according to the rules and proceedings of our High Court of Chancery in Great Britain; and upon a bill filed, to issue subpoenas, and other process under the seal of the said Supreme Court of Judicature, at Fort William in Bengal, to compel the appearance and answer, upon oath, of the parties therein complained against, and obedience to the decrees and orders of the said Court of Equity, in such manner and form, and to such effect, as our High Chancellor of Great Britain doth, or lawfully may, under our great seal of Great Britain.

Supreme Court to be a Court of Equity, as the Court of Chancery in Great Britain.

Upon a bill filed, to issue subpoena, and compel appearance, etc.

See 13 Geo. iii, C. 63, s. 14, *ante*; and Letters Patent of 1865, cl. 19, *post*.

19. And it is our further will and pleasure, and we do hereby grant, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall also be a Court of Oyer and Terminer, and Gaol Delivery, in and for the town of Calcutta, and factory of Fort William in Bengal, aforesaid, and the limits thereof and the factories subordinate thereunto; and shall have the like power and authority as Commissioners, or Justices of Oyer and Terminer and Gaol Delivery, have or may exercise, in that part of Great Britain called England, to enquire, by the oaths of good and sufficient men, of all treasons, murders, and other felonies, forgeries, perjuries, trespasses, and other crimes and misdemeanours, heretofore had, done, or committed, or which shall hereafter be had, done, or committed within the said town or factory, and the limits aforesaid, and the factories subordinate thereto; and for that purpose to issue their warrant or precept, to be prepared in manner above mentioned, and directed to the said Sheriff, commanding him to summon a convenient number, therein to be

Supreme Court to be a Court of Oyer and Terminer and Gaol Delivery for Calcutta and factory of Fort William and factories subordinate.

With the powers as Justices of Oyer and Terminer in England.

To enquire of all offences within limits of jurisdiction.

Precept to Sheriff to summon Grand Jurors,

cl. 19.

subjects of His
Majesty.

To summon
Petit Jurors.

Punishment of
contempt for
non-attendance
of Jurors.

Witnesses to
be summoned
and sworn.

Criminal Justice
to be administered
as in Courts of
Oyer and Terminer
in England.

Jurisdiction
over all offences
committed in
Bengal, etc.,
by any subject
of His Majesty,

or any person
in the service
of the Com-
pany, or of any
such subject ;

specified, of the principal inhabitants, resident in the said town of Calcutta, being subjects of Great Britain, of us, our heirs and successors, to attend and serve at a time and place, therein also to be specified, as a Grand Jury or Inquest, for us, our heirs and successors, and present to the said Supreme Court of Judicature, at Fort William in Bengal, such crimes as shall come to their knowledge, and the said crimes and offences to hear and determine, by the oaths of other good and sufficient men, being subjects of Great Britain, of us, our heirs or successors, and resident in the said town of Calcutta, and for that purpose to issue a summons, or precept, prepared in such manner as is before mentioned, and directed to the said Sheriff, commanding him to summon a convenient number, to be therein specified, of such British subjects as aforesaid, to be and appear, at a time and place therein to be specified, and to try the said indictment or inquest ; and if any such Grand or Petit Jury, so summoned as aforesaid, shall refuse or neglect to attend, according to such summons, and be sworn upon inquest, we do hereby further empower the said Supreme Court of Judicature, at Fort William in Bengal, to punish the said contempt, by fine or imprisonment, or both ; and we do further empower the said Supreme Court of Judicature, at Fort William in Bengal, in like manner, and under the like penalties, to cause all such witnesses as justice shall require, to be summoned, and to administer to them, and each of them, the proper oaths, that is to say, an oath upon the Holy Evangelists of God, to such as profess the Christian religion ; and to others, such oaths, and in such manner, as the said Supreme Court of Judicature, at Fort William in Bengal, shall esteem to be most binding upon their consciences ; and to proceed to hear, examine, try, and determine, the said indictments and offences, and to give judgment thereupon, and award execution thereof ; and in all respects to administer criminal justice, in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as our Courts of Oyer and Terminer, and Gaol Delivery, do or may, in that part of Great Britain called England ; and we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, in like manner to inquire, hear, and determine, and to award judgment and execution of, upon, and against all treasons, murders, felonies, forgeries, perjuries, trespasses, crimes, misdemeanours, and oppressions, had, done or committed, or which shall hereafter be had, done, or committed, in the districts, provinces, or countries called Bengal, Behar, and Orissa, by any of the subjects of us, our heirs or successors, or any other person or persons, who shall, at the time of committing the same, have been employed by, or shall have been, directly or indirectly, in the service of the said United Company, or of any of the subjects of us, our heir or successors ; and for that purpose to award and issue a writ

or writs, to the said Sheriff, prepared in manner beforementioned, commanding him to arrest and seize the body and bodies of such offenders, and bring him or them to Fort William aforesaid, and him or them to keep, until he or they shall be delivered, by due course of law, and to do all other acts which shall be necessary for the due administration of criminal justice, in such manner and form, or as nearly as the circumstances and condition of the case will admit of, as our Courts of Oyer and Terminer and Gaol Delivery, may do, in that part of Great Britain called England; and we do further ordain and establish, that in such cause, it shall not be lawful for such offender to object to the locality of the jurisdiction of the Court, or the Grand or Petit Jury; but he shall be indicted, arraigned, tried, convicted, and punished, or acquitted and demeaned, in all respects, as if the crime had been committed within the said town of Calcutta, or factory of Fort William, or the limits thereof.

And to issue Bench Warrant, etc., as Courts of Oyer and Terminer in England.

Offender cannot object to the locality of the Court's jurisdiction or to the Jury; but is to be tried, etc., as if the crime had been committed in Calcutta.

Juries.—By 7 Geo. IV, c. 37, s. 1, all persons resident in Calcutta, Madras and Bombay, not being subjects of any foreign state, were declared eligible to serve on juries; and by s. 2 power was given to the Court to make rules with respect to the qualification, etc., of jurors.

That statute was repealed, as to so much thereof as had not been previously repealed, by Act XIV of 1870, s. 1 and schedule.

The Code of Criminal Procedure Act, V of 1898, s. 313, provides for the preparation of lists of Common and Special jurors subject to such rules as the High Court may from time to time prescribe (see Rules, *post*, page 410). See also Act V of 1898, Chapter XXXIII.

Jurisdiction.—See 13 Geo. III, c. 63, ss. 13 and 14; 26 Geo. III, c. 57, s. 29 [making the servants of the United Company and all other subjects of the Crown resident in India amenable to the Courts of Oyer and Terminer and of General or Quarter Sessions for all criminal offences committed in Asia, Africa or America, between the Cape of Good Hope and the Straits of Magellan within the limits of the Company's trade]; and 33 Geo. III, c. 52, s. 67 [making His Majesty's subjects amenable to all Courts of Justice both in India and Great Britain for offences committed in the territory of Native States]. (B)

20. "And whereas cases may arise, wherein it may be proper to remit the general severity of the law." We do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to reprieve and suspend the execution of any capital sentence, wherein there shall appear, in their judgment, a proper occasion for mercy, until our pleasure shall be known; and they shall in such case transmit to us, under the seal of the Supreme Court of Judicature, at Fort William in Bengal, a state of the said case, and of the evidence, and of their reasons for recommending the criminal to our mercy; and in the meantime, they shall cause such offender to be kept in strict custody, or deliver him or her out to sufficient mainprize or bail, as the circumstances shall seem to require.

Supreme Court may reprieve or suspend execution of sentence, until the King's pleasure is known, to whom a state of the case, etc., is to be sent.

In the meantime the offender may be detained or delivered on bail.

See Letters Patent of 1865, cl. 41, *post*.

cl. 21.

Court of Requests and Quarter Sessions established by Charter, 26 G. 2. And Justices, Sheriffs, and other Magistrates subject to control of Supreme Court, as inferior Courts in England are to the Court of King's Bench.

Court may issue writs of Mandamus, Certiorari, etc., and punish contempt by fine and imprisonment.

21. And to the end that the said Court of Requests, and the said Court of Quarter-Sessions, erected and established, at Fort William in Bengal, by the said charter of our said Royal Grandfather, made in the twenty-sixth year of his reign, and the Justices, Sheriffs, and other Magistrates thereby appointed for the said districts, may better answer the ends of their respective institutions, and act more conformably to law and justice, it is our further will and pleasure, and we do hereby further grant, ordain, and establish, that all and every the said Courts and Magistrates shall be subject to the order and control of the said Supreme Court of Judicature, at Fort William in Bengal, in such sort, manner, and form, as the inferior Courts and Magistrates of, and in that part of Great Britain called England are, by law, subject to the order and control of our Court of King's Bench; to which end, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered and authorized, to award and issue a writ or writs of Mandamus, Certiorari, Procedendo, or error, to be prepared in manner above mentioned, and directed to such Courts or Magistrates as the case may require, and to punish any contempt of a wilful disobedience thereunto by fine and imprisonment.

Certiorari.—For form of rule nisi for a *certiorari* see In the matter of an application by Nundo Lal Bose v. The Corporation of Calcutta, 3rd March, 1884.

See 33 Geo. III, c. 52, s. 153, by which convictions were removable by *certiorari*. That section was repealed by Act X of 1875, by s. 147 of which Act, the High Court was empowered to transfer to itself cases from Police Magistrates.

See now section 526 of Act V of 1898.

For procedure on transfer of a case under s. 147 of Act X of 1875 see the Queen v. Upendronath Dass, 1. L. R., 1 Cal., 356.

Court of Requests.—(1) The Calcutta Court of Requests was abolished by Act IX of 1850, s. 3, and the new Court then established (s. 4) was styled the Calcutta Court of Small Causes; it was to be deemed a Court of Requests (s. 6); its jurisdiction was extended to suits for sums not exceeding Rs. 500 (s. 32); it had power to make rules of practice, subject to the approval of the Supreme Court (s. 41); the Supreme Court Judges might act as its Judges (s. 11); a Judge of the Supreme Court might remove to that Court any cause for a sum exceeding Rs. 100 and involving some legal or equitable question of difficulty, novelty or general importance (s. 54); a question of law or equity might be reserved for the opinion of the Supreme Court (s. 55); the Supreme Court had concurrent jurisdiction (2) (s. 100).

The procedure under that Act was essentially similar to the procedure in the English County Courts previous to the Common Law Procedure Act, 1852. By Act XXVI of 1864 the jurisdiction of the Presidency Small Cause Courts was extended to suits for sums not exceeding Rs. 1,000; and, with the consent of parties, to suits of higher value; in suits for sums exceeding Rs. 500 the Judges were to reserve any question of law or equity or any question as to the admission or rejection of any evidence as to which they entertained any doubts, or which they were requested by either party to reserve, for the opinion of the High Court; and any question on which two Judges differed was also to be so reserved.

(1) See Preface, pp. v and vi.

(2) See Note to cl. 12 of Letters Patent of 1865, post, p. 84.

By Act XV of 1882, the jurisdiction of the Presidency Small Cause Court was further extended to suits not exceeding Rs. 2,000, and, by consent beyond that pecuniary limit. By a 69 compulsory references to the High Court are provided for. For rules as to such references see Ch. XXXIV, *post*, p. 344.

The procedure under that Act was based upon its provisions, and to a certain extent upon the provisions of the Code of Civil Procedure, certain portions of which Code were by section 23 made applicable.

By Act I of 1895, known as the Amending Act, a defendant is enabled to obtain the removal to the High Court of a suit in which the value exceeds Rs. 1,000. That Act enables the High Court to make rules with the object of framing an improved and more summary procedure. (B. pp.10 & 11.)

The latest rules published by the High Court were published in the *Calcutta Gazette* of 22nd June 1910—the portions of the Code of 1908 made applicable to the Small Cause Court being set out in Schedule A to the rules.

Court of Quarter Sessions.—See Preface, p. iv *et seq.*

22. And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall be a Court of Ecclesiastical Jurisdiction, and shall have full power and authority to administer and execute, within and throughout the said provinces, districts, or countries, called Bengal, Behar, and Orissa, and towards and upon our British subjects there residing, the Ecclesiastical law, as the same is now used and exercised in the diocese of London, in Great Britain, so far as the circumstances and occasions of the said provinces and people shall admit, or require: and to that purpose, we give and grant to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to take cognizance of, and proceed in all causes, suits, and business, belonging and appertaining to the Ecclesiastical Court, before the said Supreme Court of Judicature, at Fort William in Bengal, in whatsoever manner to be moved, as well at the instance or promotion of parties as of office, mere or mixed, against any of our British subjects, residing at the said provinces, countries, or districts, and which, by the law and custom of the said diocese of London, are of Ecclesiastical cognizance; and the said causes, suits, and business, with their incidents, emergents, and dependents, and whatsoever is thereto annexed, and therewith connected, to hear, dispatch, discuss, determine; and also to grant probates, under the same seal of the said Supreme Court of Judicature, at Fort William in Bengal, of the last wills and testaments of all or any of the said British subjects, of us, our heirs and successors, dying within the said three provinces, countries, or districts of Bengal, Behar, and Orissa; and to commit letters of administration under the same seal, of the goods, chattels, credits, and other effects whatsoever, of such British subjects as aforesaid, who shall die intestate, within the said three provinces, countries, or districts, or who shall not have named an executor, resident in such districts, or where the executor, being duly cited, according to the form now used for that purpose, in the said diocese of London, shall not appear, and sue forth such probate, annexing the will to the said letters of

Supreme Court to exercise Ecclesiastical Jurisdiction in Bengal, Behar, and Orissa on British subjects, as is exercised in the diocese of London.

Power to proceed in all causes, suits, etc., against British subjects residing in Province.

To grant probates of wills of British subjects dying within Bengal, Behar, and Orissa.

And letters of administration of intestates, or where executor absent.

Form of proceeding therein, as in the diocese of London.

cl. 22.

Administration
when no exe-
cutor named.

To sequester
estates of de-
ceased persons.

To allow and
reject accounts.

Proviso as to
reserving power
to grant pro-
bate when exe-
cutor appears
after letters of
administration
granted.

To whom let-
ters of admi-
nistration are
to be granted.

administration, where such person shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said three provinces, countries, or districts, and who, being duly cited thereunto, will appear, and sue forth a probate thereof; and to sequester the goods, chattels, credits, and other effects whatsoever, of such person so dying, in cases allowed by law, as the same is, and may now be used in the said diocese of London; and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject the account of them, in such manner and form as is now used, or may be used in the said diocese of London, and to do all other things whatsoever, needful and necessary in that behalf: provided always, and we do hereby authorize and require the said Supreme Court of Judicature, at Fort William in Bengal, in such cases as aforesaid, where letters of administration shall be committed, with the will annexed, for want of an executor appearing in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor, whenever he shall duly appear, and sue forth the same: and we do hereby further authorize and require the said Supreme Court of Judicature, at Fort William in Bengal, to grant and commit such letters of administration, according to the course now used, or which lawfully may be used, in the said diocese of London, to the lawful next-of-kin of such person so dying as aforesaid, and, in case no such person then be residing within the jurisdiction of the said Supreme Court of Judicature, at Fort William in Bengal, or, being duly cited, shall not appear, and pray the same, to the principal creditor of such person, or such other creditor as shall be willing or desirous to obtain the same; and for want of any creditor appearing, then to such other person or persons who shall be thought proper by the said Supreme Court of Judicature, at Fort William in Bengal.

See 13 Geo. III, c. 63, s. 13.

By the first Letters Patent of the High Court, s. 33, the Charter of the Supreme Court, so far as it gave that Court its ecclesiastical jurisdiction, was repealed, except as provided in s. 34.

By s. 34, the like power is given to the High Court as that exercised by the Supreme Court in relation to the granting of probates and letters of administration.

By the second Letters Patent of the High Court, s. 34, the restricted power given to the High Court by s. 34 of the first Letters Patent is continued; but so that it shall not be exercised within the limits of the jurisdiction of any other High Court, and "subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration."

Under this section the High Court had and exercised, within narrower, territorial limits, the like testamentary and intestate jurisdiction as that which the Supreme Court had and exercised under its Charter.

The unrepealed portion of the Charter of the Supreme Court relating to ecclesiastical jurisdiction, and the rules of procedure founded thereon, which continued to regulate the proceedings of the High Court in matters testamentary and intestate until the end of 1865, then ceased to have effect in consequence of the Indian Succession Act, X of 1865, except as to "any will made, or any intestacy occurring, before the first day of January 1866," which by the Act itself [s. 331] was excluded from the operation thereof. The old rules of procedure also ceased to have effect as to such excepted wills or cases of intestacy in consequence of a rule of the High Court [under s. 37 of the second Letters Patent], by which the procedure in matters testamentary and intestate was required to be regulated by the rules of procedure laid down in the Indian Succession Act, "whether the Act itself applies to the case or not, and in cases to which such rules are inapplicable, by Act VIII of 1859 and XXIII of 1865." (B. pp. 12-13.)

The rule referred to in the last paragraph is old rule 65 which has been omitted from the present rules as being unnecessary. See I. S. Act (X of 1865), s. 235 *et seq.* and the corresponding sections of the Probate and Administration Act (V of 1881); see also Chap. XXXV. *post*, p. 346.

23. And we do hereby further enjoin and require, that every person, to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security, by bond, to the junior Justice of the said Supreme Court of Judicature, at Fort William in Bengal, for the payment of a competent sum of money, with two or more able sureties, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased; which bond shall be deposited in the said Supreme Court of Judicature, at Fort William in Bengal, among the records thereof, and there safely kept, and a copy thereof shall also be recorded among the proceedings of the said Supreme Court of Judicature, at Fort William in Bengal; and the condition of the bond shall be to the following effect: "That if the above bounden administrator of the goods, chattels, and effects of the deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased, which have or shall come to the hands, possession, or knowledge of him, the said administrator, or the hands or possession of any other person or persons for him, and the same, so made, do exhibit, or cause to be exhibited, into the Supreme Court of Judicature, at Fort William in Bengal, at or before a day therein to be specified, and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the said deceased, at the time of his death, or which, at any time afterwards, shall come to the hands or possession or to the hands and possession of any other person or persons for him, shall well and truly administer according to law, and further, shall make, or cause to be made, a true and just account of his said administration, at or before a time therein to be specified, and all the rest and residue of the said goods, chattels, credits,

Administrators to give security to the junior Justice, to the value of the estate.

How bond to be kept and recorded.

Form of the condition of the bond.

cl. 22—24.

Directions, if
it shall be neces-
sary to put the
said bond in
suit.

and effects, which shall be found remaining upon the said administration account, the same being first examined and allowed of, by the said Supreme Court of Judicature, at Fort William in Bengal, shall deliver and pay unto such person or persons respectively, as shall be lawfully entitled to such residue, then this obligation to be void, and of none effect, or else to remain in full force and virtue :” and in case it shall be necessary to put the said bond in suit, for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said Supreme Court of Judicature, at Fort William in Bengal, to be principally interested therein, such person and persons from time to time, paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said Supreme Court, be allowed to sue the same, in the name of the said obligee, and the said bond shall not be sued in any other manner ; and we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to order that the said bond shall be put in suit, in the name of the said junior Judge, or of his executor, whom we also authorize the said Supreme Court of Judicature, at Fort William in Bengal, to name and appoint for that special purpose.

The Bond is now given to the Chief Justice and, under s. 256 of Act X of 1865, and s. 78 of Act V of 1881, may be with *one* or more sureties ; and in such form as the Judge shall from time to time direct. See rule 15 of Chap. XXXV, *post*, p. 360, and notes thereunder.

For the purpose of putting an administration bond in suit, the procedure prescribed by s. 257 of the I. S. Act (X of 1865) should be followed. Section 79 of the Probate and Administration Act (V of 1881) is the same as s. 257 of the I. S. Act.

An Administration bond may, under these sections, be assigned to any person in order to be put in suit and may, for that purpose, be assigned to the Receiver of the Court. (In goods of Tregovant, 24th March 1881, Wilson, J.) or to the Administrator General (Debendronath Dutt v. The Administrator General (1906) I. L. R., 33 Cal., known as Craster’s case, at p. 738.)

The assignment may be by endorsement on the bond, or by a separate deed. (See Belchambers’ Practice, pp. 440-441.) In Craster’s case it was by endorsement by the Registrar to the Administrator General.

Objection was taken in that case (1) that the Bond should not have been in the name of the Chief Justice, (2) that the Court had no power to assign it to the Administrator General, (3) that the Court had no power to authorize the Registrar to assign it, (4) that the Administrator General was not empowered to accept the assignment. All these objections were overruled.

In that case C had obtained a grant of Letters of Administration under such fraudulent circumstances that the Court held the grant to be void *ab initio*. It was contended that if the Grant was void the bond also was void and the sureties not liable under it. *Held* by the majority of the Court that they were liable.

Court to ap-
point Registers,
Proctors, etc.

24. And we do hereby authorize the said Supreme Court of Judicature, at Fort William in Bengal, to constitute and appoint such, and so many registers, proctors, apparitors, and other officers, as, from time to time, there shall be occasion for, and to do and

perform all other matters and things, needful and necessary, in or concerning the premises although, by their own nature, they may require a more special warrant or mandate.

See Letters Patent of 1865, cl. 8.

25. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to appoint guardians and keepers for infants, and their estates, according to the order and course observed in that part of Great Britain called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are, or shall be deprived of their understanding or reason, by the act of God, so as to be unable to govern themselves and their estates, which we hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to inquire, hear, and determine by inspection of the person, or by such other ways and means by which the truth may best be discovered and known.

Court to appoint Guardians of infants, and of insane persons, and of their estates.

See Letters Patent of 1865, cl. 17, *post*, and note thereto.

26. And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall be a Court of Admiralty, in and for the said provinces, countries, or districts, of Bengal, Behar, and Orissa, and all other territories and islands adjacent thereunto, and which now are, or ought to be, dependent thereupon; and we do hereby commit and grant to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to take cognizance of, hear, examine, try, and determine all Causes, civil and maritime, and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships, and all matters and contracts, which in any manner whatsoever relate to freight, or money due for ships hired and let out, transport-money, maritime usury or bottomry, or to extortions, trespasses, injuries, complaints, demands, and matters, civil and maritime, whatsoever, between merchants, owners, and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid, or between others contracted, done, had, or commenced, in, upon or by the sea, or public rivers, or ports, creeks, harbours, and places overflown, within the ebbing and flowing of the sea, and high-water mark, within, about, and throughout the said three provinces, countries, or districts, of Bengal, Behar, and Orissa, and all the said territories or islands adjacent thereunto and dependent thereupon, the cognizance whereof doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents and dependencies annexed and connexed causes whatsoever, and to proceed summarily therein with all possible despatch, according

Supreme Court to be a Court of Admiralty.

With full power in all Causes, civil and maritime.

And all pleas of contracts, debts, etc.,

and all matters civil and maritime whatsoever. Extent of jurisdiction.

which is to be exercised as in England,

cl. 26—27.

according to
course of Ad-
miralty there,
without formal-
ties of law.

to the course of our Admiralty of that part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact, and the equity of the case.

See proviso to cl. 28, *post*; and Letters Patent of 1865, cl. 32, *post*, and note thereto.

Jurisdiction in
regard to Crimes
maritime,

according to
Admiralty in
England,

committed on
the high seas
within the
limits and
jurisdiction
aforesaid,

to punish
offenders ac-
cording to civil
and maritime
law,

and to deliver
and discharge
them;
to take recog-
nizances, etc.,

and to arrest
ships, persons,
goods, etc.,

and compel
appearance
under penalties,

and witnesses to
give evidence.

Proceedings in
such cases
according to
Civil law
and course of
the Admiralty
in England.

27. And we do further commit to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to enquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being our British subjects, resident in the said town of Calcutta, and not otherwise, all treasons, murders, piracies, robberies, felonies, maimings, forestalling, extortions, trespasses, misdemeanors, offences, excesses, and enormities, and maritime crimes whatsoever according to the laws and customs of the Admiralty, in that part of Great Britain called England, done, perpetrated, or committed upon the high seas, within the limits and jurisdiction aforesaid, and to fine, imprison, correct, punish, chastise, and reform parties guilty, and all violators of the law, usurpers, delinquents, contumacious, absenters, masters of ships, mariners, rowers, fishers, shipwrights, and other workmen, exercising any kind of maritime affairs, according to the said civil and maritime laws, ordinances, and customs, and their respective demerits, and to deliver and discharge persons imprisoned in that behalf, who ought to be delivered, and to take recognizances, obligations, stipulations and cautions, as well to our use, as at the instance of other parties, and to put the same in execution, or to cause or command them to be executed; and also to arrest, or cause or command to be arrested, according to the Civil Law, and the ancient customs of our High Court of Admiralty, in that part of Great Britain called England, all ships, persons, things, goods, wares, and merchandizes, for the premises and every of them, and for other causes whatsoever, concerning the same, wheresoever they shall be met with or found, in or throughout the said districts and jurisdictions aforesaid; and to compel all manner of persons in that behalf, as the case shall require, to appear and answer in the said Court, with power of using any temporal coercions, and inflicting mulcts and penalties, according to the laws and customs aforesaid; and moreover to compel witnesses, in case they should withdraw themselves for interest, fear, favour, or ill-will, or other cause whatsoever, to give evidence to the truth, in all and every the cause or causes, abovementioned, according to the exigencies of the law, and to proceed in such cause or causes, according to the civil and maritime laws and customs, as well as of mere office, mixed or promoted, at the instance of any party, as the case may require, and to promulge and interpose all manner of sentences and decrees, and put the same in execution, according to the course, and order of the Admiralty, as the same is now used in that part of Great Britain called England.

See 33 Geo. III, c. 52, s. 156 [extending the Admiralty jurisdiction of the Supreme Court to the high seas, over all offences, misdemeanors, and maritime causes whatsoever]; 53 Geo. III, c. 155, s. 110 [extending the Admiralty jurisdiction of the Supreme Court at each of the three Presidencies over all crimes committed on the high seas]; and Letters Patent of 1865, s. 33, *post*, and note thereto.

28. And we do hereby ordain and appoint, that all affidavits, taken in the said Supreme Court of Judicature, at Fort William in Bengal, or before any Justice therefor, shall be made on oaths administered in such form and manner as is before directed, in the case of witnesses to be examined before the said Supreme Court of Judicature, at Fort William in Bengal; and that in all civil cases, the affirmation in writing of a Quaker, which the said Court, or any Justice of the said Supreme Court of Judicature, at Fort William in Bengal, as the case may require, are hereby authorized and empowered to take, shall be of the same weight, authority, and effect, as an affidavit upon oath; provided always that the several powers and authorities hereby to proceed in maritime causes, and according to the laws of the Admiralty, shall extend and be construed to extend only to the subjects of us, our heirs, or successors, who shall reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or some of them and to persons who shall, when the cause of suit or complaint shall have arisen, have been employed by, or shall then have been, directly or indirectly, in the service of the said United Company, or of any of our subjects.

Affidavits and affirmations in the Court.

Proviso in causes maritime.

Jurisdiction to extend only to subjects of the King, resident in Bengal, etc. and persons employed by the Company or subjects.

See Preface, p. xxi, and Indian Oaths Act, X of 1873.

29. And we hereby reserve to ourselves, our heirs and successors, all amercements, fines, ransoms, and forfeitures, to be set and imposed by the said Supreme Court of Judicature, at Fort William in Bengal, or otherwise incurred: provided always, that it shall be lawful, and we hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to make such satisfaction to prosecutors of informations or indictments, as to the said Supreme Court of Judicature, at Fort William in Bengal, shall seem reasonable and fit, out of any fine to be by them set or imposed, upon any person or persons who shall be convicted on such prosecutions.

All fines, etc., imposed by Supreme Court reserved to the King.

Satisfaction to be made to prosecutors out of fines set by the Court.

As to the mode of levying fines, see the Code of Criminal Procedure, Act V of 1898, s. 386, and as to payment of fines in compensation, ss. 250 and 545.

See also note on the subject of fines, *Appa.*, *post*, p. 552; and Act X of 1897, s. 25, by which ss. 63—70 of the Indian Penal Code (XLV of 1860), and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines are made applicable to all fines under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary. (B. p. 19.)

Appeal allowed to the King in Council from judgments, etc., of Supreme Court,

by petition to that Court.

In any civil cause.

Stating causes of appeal.

Where party appealing directed to pay money, etc. Court may award execution of judgment, etc., or security to be given, etc.

Provided that where judgment, etc., ordered to be executed, security be taken from the other party, etc.

And in all cases, security to be given for costs, and performance of judgment, on appeal.

When and how appeal to be allowed, etc.

30. And it is our further will and pleasure, and we hereby direct, establish, and ordain that if any person shall find him, her, or themselves agreed, by any judgment, decree, order, or rule of the said Supreme Court of Judicature, at Fort William in Bengal, in any case whatsoever, it may be lawful for him and them to appeal to us, our heirs or successors, in our or their Privy Council, in such manner, and under such restrictions and qualifications, as are hereinafter mentioned, that is to say, in all judgments, decrees, or decretal orders, made by the said Supreme Court of Judicature at Fort William in Bengal, in any civil cause, the party and parties, against whom, or to whose immediate prejudice the said judgment, decree, or decretal order shall be or tend, may, by his or their, humble petition, to be preferred for that purpose to the said Supreme Court of Judicature, at Fort William in Bengal, pray leave to appeal to us, our heirs or successors, in our or their Privy Council, stating in such petition the cause or causes of appeal; and in case such leave to appeal shall be prayed by the party or parties, who is or are directed to pay any sum of money, or to perform any duty, the said Supreme Court of Judicature, at Fort William in Bengal, shall, and is hereby empowered to award, that such judgment, decree, rule, or order shall be carried into execution, or that sufficient security shall be given, for the performance of the said judgment, decree, rule, or order, as shall be most expedient to real and substantial justice; provided always that where the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit to order the judgment, decree, rule, or order, to be executed, security shall be taken from the other party or parties, for the due performance of such order or decree, as we, our heirs or successors, shall think fit to make thereupon; and, in all cases, we will and require that security should also be given, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, for the payment of all such costs as the said Supreme Court of Judicature, at Fort William in Bengal, may think likely to be incurred by the said appeal, and also for the performance of such judgment or order, as we, our heirs or successors, shall think fit to give or make thereupon; and upon such order or orders of the said Supreme Court of Judicature, at Fort William in Bengal, thereupon made, being performed to their satisfaction, the said Supreme Court of Judicature, at Fort William in Bengal, shall allow the appeal, and the party or parties, so thinking him, her, or themselves aggrieved, shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs or successors, in our or their Privy Council, in such manner and form, and under such rules, as are observed in appeals made to us, from our plantations or colonies, or from our islands of Guernsey, Jersey, Sark, and Alderney.

See Privy Council Appeals Act, VI of 1874 [by which s. 18 of 13 Geo. III, c. 63, and s. 16 of 37 Geo. III, c. 142, are repealed]; and Letters Patent of 1865, ss. 39 and 40, *post*.

31. And it is our further will and pleasure, and we do hereby direct and ordain, that, in all such cases, the said Supreme Court of Judicature, at Fort William in Bengal, shall certify and transmit, under the seal of the said Supreme Court of Judicature, at Fort William in Bengal, to us, or our heirs or successors, in our or their Privy Council, a true and exact copy of all the evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed.

Supreme Court on such appeal to transmit a copy of all evidence, etc.

See Letters Patent of 1865, s. 42, *post*, and notes thereto.

32. And it is our further will and pleasure, that in all indictments, informations, and criminal suits and causes whatsoever, the said Supreme Court of Judicature, at Fort William in Bengal, shall have the full and absolute power and authority, to allow or deny the appeal of the party pretending to be aggrieved, and also to award, order, and regulate the terms, upon which such appeals shall be allowed, in such cases in which the said Supreme Court of Judicature, at Fort William in Bengal, may think fit to allow such appeal.

In criminal cases the Court may allow or deny appeal, and regulate the terms.

See Letters Patent of 1865, cl. 41, *post*.

33. And we hereby also reserve to ourselves, our heirs and successors, in our or their Privy Council, full power and authority upon the humble petition of any persons aggrieved by a judgment, decree or decretal or other order or rule of the said Supreme Court of Judicature, at Fort William in Bengal, to refuse or admit his, her, or their appeal therefrom, upon such terms, and under such limitations, restrictions, and regulations, as we or they shall think fit, and to reform, correct, or vary such judgment, decree, or orders as to us or them shall seem meet; and we do further direct and ordain, that the said Supreme Court of Judicature, at Fort William in Bengal, shall, in all such cases, conform and execute, or cause to be executed, such judgments and orders, as we shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal or other order or rule, by the said Supreme Court of Judicature, at Fort William in Bengal, should or might have been executed: provided always that no appeal shall be allowed by the said Supreme Court of Judicature, at Fort William in Bengal, unless the petition for that purpose shall be preferred within six months from the day of pronouncing the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute shall exceed the sum of one thousand pagodas.

Reservation of power to the King to refuse or admit an appeal,

and vary judgment, etc.

Court to execute judgments and orders of His Majesty.

No appeal to be allowed, except the petition be preferred within six months, and value exceed 1,000 pagodas.

See 3 & 4 Will. IV, c. 41, s. 24; Order in Council dated 10th April, 1838, by which the *minimum* appealable amount was fixed at Rupees ten thousand; Letters Patent, 1865, s. 39, *post*; and Act V of 1908, s. 110. See also Macpherson's Practice of the Judicial Committee, 2nd Edn., App. 26.

d. 34—35.

Governor-General and Council, Chief and other Justices, not liable to arrest except for treason or felony.

Where a Capias is provided in other cases :

Their goods and estates may be seized and sequestered.

34. Provided also, and we do hereby limit and declare, that the person or persons of the Governor-General, or of any of the Council, appointed in and by the above recited Act of Parliament, or of the Chief Justice, or any of the Justices, of the said Supreme Court of Judicature, at Fort William in Bengal, hereby erected and created, shall not, nor shall any of them respectively, be subject or liable to be arrested or imprisoned, upon any action, suit, or proceeding in the said Court, except in cases of treason or felony ; nor shall the said Supreme Court of Judicature, at Fort William in Bengal, be competent to hear, try, and determine any indictment or information, against the said Governor-General, or any of the said Council, for the time being, for any offence, not being treason or felony, which the said Governor-General, or any of the said Council, shall or may be charged with having committed, in Bengal, Behar, and Orissa, anything hereinbefore contained to the contrary notwithstanding, but in all such cases abovementioned, wherein a Capias, or process, for arresting the body, is hereby given and provided, it shall and may be lawful for the said Supreme Court of Judicature, at Fort William in Bengal, to order the goods and estate of such persons to be seized and sequestered, until he or they respectively shall appear, and yield obedience to the judgment, decree, decretal or other order or rule of the said Court.

See 13 Geo. III, c. 63, s. 17 ; and 21 Geo. III, c. 70, s. 1, exempting the Governor-General and Council of Bengal from the jurisdiction of the Supreme Court in respect of acts done by them in their public capacity. See also Preface, *ante*, p. vii.

Court Room for holding Supreme Court, to be appointed by Judges.

Chief Justice to be sworn.

Puisne Justices to be sworn.

35. And it is our further will and pleasure, and we do hereby direct, ordain, and appoint, that the said Chief Justice, and other Justices, shall respectively assemble themselves, in a proper Court or room, to be by them appointed for that purpose, forthwith after their respective arrivals, at the said town of Calcutta in Bengal aforesaid ; and, before they shall proceed to execute the abovementioned powers or authorities, or any of them, the said Chief Justice shall then and there take an oath, in the most solemn manner that he will, to the best of his knowledge, skill, and judgment, duly and justly execute the office of Chief Justice of the said Supreme Court of Judicature, at Fort William in Bengal, and impartially administer justice in every cause, matter, or thing, which shall come before him, and shall also take the oath of allegiance and supremacy, and make and subscribe the declaration against transubstantiation, in such manner and form, as the same are, by law, appointed to be taken or made in Great Britain, of which oaths a record shall be forthwith made. And we do hereby authorize the said Puisne Justices, or so many of them as shall be so assembled, to administer the said oaths and declarations, and make such record thereof accordingly ; after which the said Puisne Justices, or so many of them as shall then and there be present, shall take the like oaths, and make and subscribe the like declara-

tions, only changing what ought to be changed for that purpose, before the said Chief Justice, of which oaths also a record shall be forthwith be made ; and we do hereby authorize the said Chief Justice, to administer the said oaths and declarations and record the same accordingly ; or if the said Chief Justice, or any other of the said Justices, shall be dead, or unavoidably absent, by sickness or otherwise, we do hereby authorize the next Justice of the said Supreme Court of Judicature, at Fort William in Bengal, who shall be there present, to take and administer the said oaths, and act, in all respects, as the Chief Justice should have done ; and we do hereby further ordain and establish, that all and every successive Chief Justice and Puisne Justice, shall, before he or they be capable of exercising the said office, respectively take, in open Court, the like oaths, and make and subscribe the like declaration, only changing what ought to be changed for that purpose, whereof records shall be made, and filed among the other records of the Court, from time to time ; and after the said Chief Justice and Puisne Justices, or so many of them as shall then and there assemble, and be present, shall have taken the said oaths, and made and subscribed the like declaration, the said Supreme Court of Judicature at Fort William in Bengal, shall be proclaimed and published in due manner, and proceed forthwith to the execution of the several authorities hereby vested in it.

Oaths how to be administered.

All future Justices to be sworn before they can act.

Supreme Court to be proclaimed.

See Letters Patent of 1865, cl. 5, *post*.

36. And it is our further will and pleasure, that from and after such publishing and proclaiming of the said Supreme Court of Judicature, at Fort William in Bengal, the said Mayor's Court of Calcutta, at Fort William in Bengal, aforesaid, granted, erected, and created, by and in the above-mentioned Charter, made in the twenty-sixth year of our said Royal Grandfather, and also the Court of Record, in nature of a Court of Oyer and Terminer and Gaol Delivery, erected and created by the said Charter and all the authority thereby given to the President, or Governor or Council, of Fort William in Bengal, to be or act as Commissioners of Oyer and Terminer and Gaol Delivery ; and every clause and article in the said Charter which extends or relates to the establishment of the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Court of Oyer and Terminer and Gaol Delivery, or to the civil, criminal, or ecclesiastical jurisdiction of the said Courts, or any of them, shall cease, determine, and be utterly void, to all intents and purposes whatsoever : provided always, that no judgment, decree, decretal or other order, rule, or act of the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Courts of Oyer and Terminer and Gaol Delivery respectively, theretofore legally pronounced, given, had, or done, shall be thereby avoided, but shall remain in full force and virtue, as if these presents had not been made ; nor shall any indictment, information, action, suit, cause, or

The Mayor's Court erected by Charter 26 George II, and every clause therein relating to said Court and to the Court of Oyer and Terminer thereby established, to be void after proclaiming of Supreme Court.

Provide that no judgments, etc., of said Courts shall be affected thereby.

cl. 36—37.

Proceedings depending in said Courts not to be abated, but transferred to Supreme Court.

Which is to proceed as if same commenced therein.

Records of said Courts to be delivered over to Supreme Court.

proceeding, depending in the said Mayor's Court of Calcutta, at Fort William in Bengal, or in the said Courts of Oyer and Terminer and Gaol Delivery, be abated or annihilated, but the same shall be transferred, in their then present condition respectively, to, and subsist and depend in the said Supreme Court of Judicature at Fort William, to all intents and purposes, as if they had been respectively commenced in the last mentioned Court; and we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings, and to make such orders respecting the same, and also respecting any sum or sums of money belonging to the suitors at the said Mayor's Court of Calcutta, at Fort William in Bengal, as the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Court of Oyer and Terminer and Gaol Delivery, might have made, or as the said Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered to make, in causes commenced or depending before the said Supreme Court of Judicature, at Fort William in Bengal, for which purpose it is our further will and pleasure, that all the records, muniments, and proceedings whatsoever, of or belonging to the said Mayor's Court of Calcutta, at Fort William in Bengal, or to the said Courts of Oyer and Terminer and Gaol Delivery, shall be delivered over, deposited, and preserved among the records of the said Supreme Court of Judicature, at Fort William in Bengal.

Mayor's Court.—See Preface, *ante*, p. iv.

Records.—See Destruction of Records Act III of 1879 and rules thereunder Chapter XXXVIII, *post*, p. 432.

Supreme Court to appoint terms and law days, and sittings after term,

and Sessions of Oyer and Terminer and Gaol Delivery, and Admiralty Sessions.

Proviso not less than 4 terms of 4 weeks and sittings 14 days, *if, etc.*

And two Sessions every year.

Increased to four.

37. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal (respect being had to the seasons of the year, and the convenience of the suitors) to settle and appoint proper terms and law days, and days for sitting after term, and to proclaim, hold, and adjourn the sessions of Oyer and Terminer and Gaol Delivery, and Admiralty Sessions, as to them shall seem most expedient; provided nevertheless, that the said Supreme Court of Judicature, at Fort William in Bengal, shall, and they are hereby required to appoint not less than four terms in the year, each term consisting of four weeks at the least, in each year, and sittings after each term, each sitting to consist of fourteen days, if the business of the said Supreme Court of Judicature, at Fort William in Bengal, be not sooner dispatched; and that the said Supreme Court of Judicature, at Fort William in Bengal, do in each year hold two Sessions of Oyer and Terminer and Gaol Delivery.

By 53 Geo. III, c. 155, s. 102 [repealed by Act X of 1875], His Majesty's Courts within the several Presidencies were required to hold their Sessions "four times at least in every year."

By Act X of 1875, s. 4, "every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints." Number now discretionary.

38. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to frame such rules of practice, and make such standing orders, for administration of justice, and the due exercise of the civil, criminal, Admiralty, and ecclesiastical jurisdiction hereby created, and to do all such other things as shall be found necessary thereunto, so as the said Supreme Court of Judicature, at Fort William in Bengal, shall, from time to time, transmit the same, under the seal thereof, to us, our heirs or successors, in our Privy Council, for our approbation, control, or alteration; and we do hereby reserve to us our heirs and successors, with the advice of our or their Privy Council, full power and authority to approve, reject, control, or vary the same, and to make such new and other rules of practice, and rules and orders, for the process of the said Supreme Court of Judicature at Fort William in Bengal, as to us or them shall appear fit and convenient, which we will and ordain shall be in force, from such time or times as the same shall be respectively transmitted to the said Supreme Court of Judicature at Fort William in Bengal.

Court to frame Rules of practice, and make standing orders, etc.

And transmit them to Privy Council for approval.

As to the power of the High Court to make rules for the purpose of regulating all proceedings in Civil Cases, without the approval of higher authority. See Letters Patent 1865, cl. 37, *post*.

See also Civil Procedure Code, Act V of 1908, Part X, ss. 121 to 131, specially s. 129, which empowers High Courts established under the Indian High Courts Act 24 & 25 Vict., c. 104, to make such rules, not inconsistent with the Letters Patent establishing it, to regulate its own procedure in the exercise of its original civil jurisdiction.

Also 24 & 25 Vict., c. 104, s. 15, *post* (enabling the High Court to make rules relating to fees *subject to the sanction of the Governor-General in Council*).

39. And we do further hereby strictly charge and command all our governors, commanders, magistrates, officers, and ministers, civil and military, and all our faithful and liege subjects whatsoever, in and throughout the said provinces, countries or districts of Bengal, Behar, and Orissa and all other lands, islands, or territories adjacent thereunto, and which are, or ought to be dependent thereupon, that in the execution of the several powers, jurisdictions, and authorities hereby erected, created, and made, they be aiding, assisting, and obedient in all things, unto the said Supreme Court of Judicature at Fort William in Bengal, as they will answer the contrary at their peril.

All Governors and King's officers and subjects to be obedient to the Supreme Court.

In witness whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, this twenty-sixth day of March in the fourteenth year of our reign.

Dated the 26th March 14th year of the reign.

By writ of Privy Seal,

COCKS.

STAT. 21, GEO. 3, CAP. 70. (1)

“An Act to explain and amend so much of an Act, made in the thirteenth year of the reign of his present Majesty, intituled ‘An Act for establishing certain Regulations for the better management of the affairs of the East India Company, as well in India as in Europe,’ as relates to the administration of justice in Bengal; and for the relief of certain persons imprisoned at Calcutta in Bengal, under a judgment of the Supreme Court of Judicature; and also for indemnifying the Governor-General and Council of Bengal, and all officers who have acted under their orders or authority, in the undue resistance made to the process of the Supreme Court.” (1781.)

s. 1.

Recites 18 Geo.
III, c. 68.

“WHEREAS, in virtue of an Act, passed in the thirteenth year of his present Majesty’s reign, intituled ‘An Act for establishing certain Regulations, for the better management of the affairs of the East India Company, as well in India as in Europe.’ His Majesty, by his Royal letters patent, of the twenty-sixth day of March, in the fourteenth year of his reign, did create and constitute a Court of Record, to be within the factory of Fort William, at Calcutta in Bengal, called the Supreme Court of Judicature, at Fort William in Bengal, with sundry directions, powers and authorities to the said Court, in the said letters patent set forth and expressed; and whereas many doubts and difficulties having arisen, concerning the true intent and meaning of certain clauses and provisions in the said act, and letters patent, and, by reason thereof, dissension hath arisen, between the Judges of the Supreme Court and the Governor-General and Council of Bengal; and the minds of many inhabitants, subject to the said Government, have been disquieted with fears and apprehensions; and further mischiefs may possibly ensue from the said misunderstandings and discontents, if a seasonable and suitable remedy be not provided. And whereas it is expedient, that the lawful government of the provinces of Bengal, Behar, and Orissa, should be supported, that the Revenues thereof should be collected with certainty, and that the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges; “May it therefore please your Majesty, that it may be enacted, and be it enacted, by the King’s most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and

ss. 1-5.

The Governor-General and Council, not to be subject to the Supreme Court.

Commons, in this present Parliament assembled, and by the authority of the same, that the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal, for, or by reason of, any act or order, or any other matter or thing whatsoever, counselled, ordered, or done by them in their public capacity only, and acting as Governor-General and Council.

Persons implicated in the Supreme Court, for acts done by order of the Governor-General and Council, may plead the general issue.

2. And *it is hereby enacted and declared*, that if any person or persons, shall be impleaded ⁽¹⁾ in any action or process, civil or criminal, in the said Supreme Court, for any act or acts done by the order of the said Governor-General and Council, in writing, he or they may plead the general issue, and give the said order in evidence ; which said order, with proof that the act or acts done, has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted, and discharged, from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Enacting words in italics rep. (U. K.) 51 and 52 Vict., c. 3.

The Court to have jurisdiction where the order extends to British subjects.

3. Provided always, that, with respect to such order or orders, of the said Governor-General and Council, as do or shall extend to any British subject or subjects, the said Court shall have and retain as full and competent jurisdiction, as if this act had never been made.

Proviso, as to liability to be impleaded in courts in England, etc.

4. Provided also, that nothing herein contained shall extend, or be construed to extend, to discharge or acquit the said Governor-General and Council, jointly or severally, or any other person or persons acting by or under their orders, from any complaint, suit or process, before any competent Court in his Kingdom, or to give any other authority whatsoever to their acts, than acts of the same nature and description had, by the laws and statutes of this kingdom, before this act was made.

If any person, making complaint to the Supreme Court, against any order of the Governor-General and Council, shall execute a bond to the Company, to prosecute the same in some competent court in Great Britain, etc., such person may compel, by order of Court, the production of copy of the order complained of, etc.

5. And *in order to prevent all abuse of the powers given to the Governor-General and Council*, be it further enacted, that in case any person, by himself or his Attorney or Counsel, shall make a complaint to the Supreme Court, and enter the same in writing, and upon oath, of any oppression or injury, charging the same to be committed by the said Governor-General, or any member or members of the Council, or any other person or persons, by or in virtue of any order given by the said Governor-General and Council, and shall execute a bond with some other person, whom the said Court shall deem responsible, jointly and severally, to the United East India Company, in such a penalty as the Court, shall appoint, effectually to prosecute the said complaint by indictment, information, or action, in some competent Court in Great Britain,

(1) This clause is omitted in the 39 and 40 of G. III, c. 79, s. 3, which relates to Madras, and in the 4 G. IV, c. 71, s. 7, which respects Bombay.—(Clarke).

within two years of the making of the same, or the return into Great Britain of the party or parties against whom the same is made ; that then, and in such case, the party complaining shall be, and is hereby, enabled to compel, by order of the Court, the production in the said Supreme Court, of a true copy or copies of the order or orders of Council complained of, and to have the same authenticated by the Court, and to examine witnesses upon the matter of the said complaint, and also on the part of the person or persons complained of ; and the said parties, as well complaining as complained of, shall have and enjoy, severally, all manner of advantages, rights and privileges, relative to proof of the said complaint or defence, and also relative to any mandamus or commission, to be issued by any of his Majesty's Courts in Westminster-hall, in case the Court, upon motion, shall think fit to issue the same as are provided in the case of any suit in such cases, by an act of the thirteenth year of his Majesty's reign, entitled " An act for establishing certain Regulations for the better management of the affairs of the East India Company, as well in India as in Europe ;" and the Supreme Court, shall have the same powers for the compelling witnesses to appear and be examined, and the same rules and directions shall be observed for the transmitting the depositions of witnesses and other papers to this kingdom as are provided by the said recited act.

And evidence to be taken, etc., as provided by 13 Geo. III, c. 63.

[The Clause in italics is omitted in the 37 G. III, c. 142, by which the Mayor's Courts were established at Madras and Bombay, and also in the 39 and 40 G. III, c. 79 ; and 4 G. IV, c. 71 ; but query whether the remedy is not given by s. 17 of the latter act ?—(Clarke).]

6. And be it further enacted, that all copies, so authenticated, of orders of the said Governor-General and Council, and also the depositions which shall have been taken in manner aforesaid, before the Supreme Court, shall be received in evidence in any of his Majesty's Courts of law or equity at Westminster.

Authenticated copies of orders and depositions shall be received in the Courts at Westminster.

Enacting words in italics rep. (U. K.) 51 and 52 Vict., c. 3.

7. And be it further enacted, that no prosecution or suit shall be carried on against the said Governor-General, or any Member of the Council, before any Court in Great Britain, (the High Court of Parliament only excepted,) unless the same shall be commenced within five years after the offence committed, or within five years after his arrival in England.

Limitation of action against Governor-General and Council.

Enacting words in italics rep. (U. K.) 51 and 52 Vict., c. 3.

8. And be it further enacted, that the said Supreme Court, shall not have or exercise any jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor-General and Council.

Supreme Court not to have any jurisdiction in any matter concerning the revenue.

Enacting words in italics rep. (U. K.) 51 & 52 Vict., c. 3.

CL. 9-11.

No person shall be subject to the jurisdiction of the Court, on account of his being a land-holder, or farmer of land, etc.

9. And for removing all doubts concerning the persons, subject to the jurisdiction of the said Supreme Court, be it enacted, that no person shall be subject to the jurisdiction of the Supreme Court, for or by reason of his being a land-owner, land-holder, or farmer of land or of land-rent, or for receiving a payment or pension in lieu of any title to, or ancient possession of, land or land-rent, or for receiving any compensation or share of profits for collecting or rents payable to the public out of such lands or districts as are actually farmed by himself, or those who are his under-tenants, in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof, within the provinces of Bengal, Behar, and Orissa, or for or by reason of his becoming security for the payment of the rents reserved or otherwise payable out of any lands or farms, or farms of land, within the Provinces of Bengal, Behar, and Orissa.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

Nor for being employed by the Company, etc.

Except in actions of trespass, or by agreement between the parties.

10. And be it further enacted, that no person, for or by reason of his being employed by the Company, or the Governor-General and Council, or by any person deriving authority under them, or for, or on account of, his being employed by a native, or a descendant of a native of Great Britain, shall become subject to the jurisdiction of the Supreme Court, in any matter of inheritance or succession to lands or goods or in any matter of dealing or contract between party and parties, except in actions for wrongs or trespasses, and also except in any civil suit, by agreement of parties in writing, to submit the same to the decision of the said Court.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

[Omitted in the 37 G. III, c. 142, and in the 39 & 40 G. III, c. 79, and in 4 G. IV, c. 71, which relate to Madras and Bombay; but see s. 17, latter act. And see Charter cl. 13, ante. S. & R.]

The name, description, and place of abode of every native employed in the service of the Company, in any judicial office, etc., shall be entered in a book.

11. And for the more perfectly ascertaining those of the natives who shall be subject to the jurisdiction of the Supreme Court, on account of their being employed by any of His Majesty's British subjects, be it enacted, that on or before the first day of January, one thousand seven hundred and eighty-three, the Governor-General and Council shall cause the name, description, and place of usual abode, of all and every native employed in the service of the East India Company in any judicial office, or as principal native officer of any district, in the collection of revenue, or in any commercial concerns of the Company, (except as hereinbefore excepted) to be entered in a book or books alphabetically disposed, distinguishing the district in which the said officers are employed, of which book or books two copies shall be made, one of which shall remain in the provincial office, and the other of which shall be registered in the Supreme Court; and the Governor-General and Council are hereby required, to register, or cause to be registered, the name of every person who shall afterwards be appointed

to succeed to any office vacant, or new created, within three months of the said appointment or creation.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XVI of 1870, s. 1 and Schedule.

12. And be it further enacted, that whenever any person or persons shall happen to die, or shall be removed from any judicial office or employment whatsoever, in the service of the East India Company, the name or names of such person or persons, so dying or removed, as aforesaid, shall be entered in a book or books for that purpose, to be kept in the manner aforesaid.

On the death or removal of any person employed by the Company, his name shall be entered in a book.

Rep. 55 & 56 Vict., c. 19; also rep. as to I. by XIV of 1870, s. 1 and Schedule.

13. And be it hereby further enacted, that all and every of His Majesty's British subjects shall, in like manner, cause to be entered in the provincial office of the district in which the said British subject doth most commonly reside, the name, description, and place of abode, of his native steward or stewards, agent or agents, or partner or partners, in any concern of revenue or merchandise, (if any such steward, agent or partner he hath,) and in like manner shall enter, or cause to be entered, within three months from the time of succession or new appointment, or new partnership, the names of him or them who are dismissed, dead or new appointed, in the said provincial office; and the president of the said Council, is directed to transmit, within three months, to Calcutta, the name of every person who shall succeed to the said employment or partnership, for which a fee of one sicca rupee for every entry, and no more, shall be paid to the officer keeping the said register.

All British subjects shall enter, in the provincial office, the name and place of abode of their native stewards, agents, &c.

And all casual fees, &c.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

14. And be it further enacted, that if any British subject shall be convicted, before the Supreme Court, of employing any native agent, or engaging with any native partner, not registered as hereinbefore is provided, or who shall be bona fide, and in effect and substance such agent or partner (although by covin, collusion or deceit, the same may be covered and concealed, contrary to the true intent and meaning of this act), the said British subject, if in the Company's service, shall forfeit, on conviction, the sum of five hundred pounds, and if not in the Company's service, shall forfeit one hundred pounds to any person suing for the same.

Penalty on British subjects employing or engaging any native agent, or partner, not so registered.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

15. And it is hereby further enacted, that no native shall, after the first day of January, one thousand seven hundred and eighty-three, be entitled to receive any fee or salary, except from the day of the date of his registry.

No native entitled to any salary before he is registered.

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

British subjects engaging in trade with native partners, not registered, not entitled to benefit thereof.

And any person prosecuting to conviction entitled to all salary and profit of share.

Supreme Court to have jurisdiction in all actions against the inhabitants of Calcutta. Provided that inheritance and succession, contracts and dealings between Mahomedans be determined by their laws; Gentoos by their laws. When only one Mahomedan, or Gentoos, by the laws of defendant.

16. *And be it further enacted, that if any British European subject shall engage in any concern of trade, with a native partner, not registered, as herein directed, the said British subject shall not be entitled to recover or receive any sum or sums of money by reason of the said joint concern, or to compel an account thereof by any suit in law or equity, in any Court within the said provinces; and any person prosecuting to conviction, in the Supreme Court, a British subject having a native partner or agent, not being registered, as aforesaid, shall be entitled to, and shall receive, by due process of the said Court, the whole of the salary engaged for, and shall also be entitled to an account, and receipt of the said British subject's share of profit of any partnership entered into with any person or persons not conforming to the regulations of this Act.*

Rep. 55 & 56 Vict., c. 19; also rep. as to B. I. by XIV of 1870, s. 1 and Schedule.

17. *Provided always, and be it enacted, that the Supreme Court of Judicature, at Fort William in Bengal, shall have full power and authority to hear and determine, in such manner as is provided for that purpose, in the said charter or letters patent, all and all manner of actions and suits against all and singular, the inhabitants of the said City of Calcutta; provided that their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan, or Gentoos, by the laws and usages of the defendant.*

Enacting words in italics rep. (v. k.) 51 & 52 Vict., c. 3.

[It seems questionable, whether this section gave the Court any further power over those who were actually resident within the local limits of the Court, than it before possessed, under the Charter; indeed, in some respects it is, perhaps, to be considered, as restrictive of the powers of the Court, obliging it to decide in certain cases according to the laws and usages of Hindoos or Mahomedans. It has long been a received opinion, that British law was first introduced within the local limits of the town of Calcutta, by the Charter, 13, G. 1, establishing the first Mayor's Court in 1726. By that Charter, the Court is authorised, "To try, hear, and determine, all civil suits, actions and pleas, between party and party, that shall or may arise or happen, or that have already arisen or happened, within the said town or factory of Calcutta, at Fort William in Bengal, or within any of the factories subject or subordinate"; and by a subsequent clause, it is directed, "That upon complaint to be made in writing, to the said Mayor's Court, by any person or persons, against any other person or persons whatsoever, then residing or being, or who, at the time when such cause of action did or shall accrue, did or shall reside, or be within the said town of Calcutta, at Fort William in Bengal, or the precincts, districts or territories thereof, of any of the causes of suit aforesaid, already accrued, or which shall or may hereafter accrue, the said Court, shall and may issue a summons in writing," etc.

It should be observed, that in this Charter, there is no exemption from the jurisdiction of the Court, of any persons resident in Calcutta; according,

therefore, to the rule recognized in the case of *Campbell v. Hall*, by Lord Mansfield, *State Trials*, Vol. 20, p. 320, all persons and all property within the limits of the town of Calcutta, would be subject to British law.

This Charter was surrendered, and another, the 26 G. 2, granted in 1753. The jurisdiction is the same as that given by the first Charter, unless the suit or action shall be between Indian Natives only; or unless the cause of suit shall not exceed five pagodas. In the first case, unless by the consent of both parties, the Mayor's Court had no jurisdiction; in the latter, the parties must have sued in the Court of Requests; still, the criminal jurisdiction of the Commissioners of Oyer and Terminer, extended to all offenders and offences committed within Calcutta, or any of the factories or places subordinate thereto.

The Act of the 13 G. 3, c. 63, which abolished the Mayor's Court, and the Charter of 1774, establishing the Supreme Court, contain no exception as to the Indian Natives of Calcutta in civil cases, and expressly give the Court a criminal jurisdiction over all offences committed within the limits of Calcutta. The jurisdiction, therefore, of the Supreme Court, would extend to all persons within the limits of the Supreme Court, and they would, prior to the 21 G. 3, be subject to British law.

In this Statute, the 21 G. 3, c. 70, the words, inhabitants of the City of Calcutta, are, for the first time, mentioned, and this Statute must be construed, not as giving the Court, for the first time, jurisdiction over the inhabitants of Calcutta, but, as providing that they shall not, when one of the defendants is a Hindoo or Mahomedan, be subject to British law, in questions of succession to lands, rents, and goods, and in matters of contract.

Of the jurisdiction of this Court, over the inhabitants of Calcutta, under the Charter, and prior to the passing of this Act, Sir Elijah Impey thus speaks: "The state of the inhabitants of Calcutta was, in every particular, different. They were, as compared to the inhabitants of the provinces, a very inconsiderable number, inhabiting a narrow district, and that district an English town and settlement; not governed by their own laws, but by those of England, long since there established; where there were no Courts of Criminal Justice, but those of the King of England, which administered his laws to the extent and in the form and manner, in which they are administered in England. The inhabitants had resorted to the English flag, and enjoyed the protection of the English law: they chose those laws in preference to their own—they were become accustomed to them. The town was part of the dominion of the Crown by unequivocal right, — originally by cession, founded on compact, afterwards by capture and conquest. Their submission was voluntary, and if they disliked the laws, they had only to cross a ditch, and were no longer subject to them. The state of an inhabitant in the provinces at large, was that of a man inhabiting his own country, subject to its own laws. The state of an Hindoo, a native of the provinces, inhabiting Calcutta, which in effect was an English town, to all intents and purposes, did not differ from that of any other foreigner, from whatsoever country he might have migrated; he partook of the protection of the laws, and in return owed them obedience."

The opinion of Fuller, C. J., in *Rex v. Goculnauth Mullick*, and another, see Appendix, title, Jurisdiction, is to the same effect; he states: "By the 21 G. 3, c. 7, the jurisdiction of the Court was not extended; this was merely a declaratory act, and though it did not narrow the jurisdiction in reality, it corrected an erroneous construction, which had been put on the previous Acts of Parliament, by which the Jurisdiction had been enlarged beyond what was the intention of the legislature."

In the case of *Tunsook Roy v. Mobarruck Ally*, 15th June 1835, see Appendix, an opinion in some respects similar, was expressed by Ryan, C. J., in delivering the judgment of the Court. Still, however, there appears good ground for supposing, that this Statute gave rise to many of the cases of

ss. 17—22.

constructive inhabitaney. See Sir Charles Grey's minute, Appendix to Report on the affairs of the East India Company, No. 5, on Legislative Council, etc., page 59.]

The above note is taken from Smoult & Ryan, pp. 66 & 67.

The rights and authority of fathers and masters of families, among the natives, preserved to them.

Acts by law of caste in families not to be held criminal.

18. *And in order, that regard should be had to the civil and religious usages of the said natives ; Be it enacted that the rights and authorities of fathers of families, and masters of families according as the same might have been exercised by the Gentoo or Mahomedan law, shall be preserved to them respectively, within their said families ; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England.*

Extended to Madras and Bombay by 37 G. III, c. 142, s. 12.

Court to frame such forms of process, etc., in suits, civil or criminal, against the natives, as shall suit their religion and manners.

19. *And be it further enacted, that it shall and may be lawful for the Supreme Court of Judicature, at Fort William in Bengal, to frame such process, and make such rules and orders for the execution thereof in suits, civil or criminal, against the natives of Bengal, Behar and Orissa, as may accommodate the same to the religion and manners of such natives, so far as the same may consist with the due execution of the laws, and attainment of justice.*

Rep. 55 & 56 Vict., c. 19 : XIV of 1870, S. 1 and Schedule.

Such forms to be transmitted to one of the Secretaries of State, for His Majesty's approbation.

20. *Provided always, and be it enacted, that such new forms of process, and rules and orders for the execution thereof, shall be forthwith transmitted to one of His Majesty's principal Secretaries of State, to be laid before His Majesty, for his royal approbation, correction or refusal ; and such process shall be used, and such rules and orders observed, until the same shall be repealed or varied, and in the last case, with such variations, as shall be made therein.*

Rep. 55 & 56 Vict. c. 19 ; XIV of 1870, s. 1 and Schedule.

The Governor-General and Council may determine on appeals from country Courts, and be deemed a Court of Record.

21. *“ And whereas, the Governor-General and Council, or some committee thereof, or appointed thereby, do determine on appeals and references from the country, or provincial Courts, in civil causes ; ” Be it further enacted, that the said Court shall, and always may, hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a Court of Record, and the judgments therein given shall be final and conclusive, except upon appeal to His Majesty in civil suits only, the value of which shall be five thousand pounds and upwards.*

Appeal allowed to His Majesty where value £5,000.

Rep. 55 & 56 Vict. c. 19 ; XIV of 1870, s. 1 and Schedule.

See note to cl. 33 of Charter, ante, p. 43.

And shall determine offences committed in collecting the

22. *And it is hereby further enacted, that the Court aforesaid, shall and is hereby declared to be a Court to hear and determine on all offences, abuses and extortions, committed in the collection of revenue, or of severities used beyond what shall appear to the said Court custom-*

ary or necessary to the case, and to punish the same according to sound discretion, provided the said punishment does not extend to death, or maiming, or perpetual imprisonment.

Rep. 55 & 56 Vict. c. 19; XIV of 1870, s. 1 and Schedule.

23. And it is hereby enacted, that the Governor-General and Council, shall have power and authority, from time to time, to frame regulations ⁽¹⁾ for the provincial courts and councils, and shall, within six months after making the said regulations, transmit, or cause to be transmitted, copies of all the said regulations to the Court of Directors, and to one of His Majesty's principal Secretaries of State; which regulations His Majesty in Council may disallow or amend; and the said regulations, if not disallowed within two years, shall be of force and authority to direct the said provincial courts, according to the tenor of the said amendment, provided the same do not produce any new expense to the suitors in the said Courts.

General and Council may frame regulations, for the provincial Courts and Councils.

Rep. 55 & 56 Vict., c. 19; XIV of 1870, s. 1 and Schedule.

24. "And whereas, it is reasonable to render the Provincial Magistrates, as well Natives as British subjects, more safe in the execution of their office;" Be it enacted, that no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever, exercising a judicial office in the country courts, for any judgment, decree, or order of the said Court, nor against any person for any act done by, or in virtue of the order of the said Court.

Judicial officers in the country Courts, not liable to actions for wrongs, etc., in Supreme Court, for any judgment or order of their Courts.

Nor any person for act done by order thereof.

Rep. 55 & 56 Vict. c. 19; XIV of 1870, c. 1 and Schedule.

25. And be it further enacted, that in case of an information intended to be brought or moved for, against any such officer or Magistrate, for any corrupt act or acts, no rule or other process shall be made or issued thereon, until notice be given to the said Magistrate or officer, or left at his usual place of abode, in writing, signed by the party or his Attorney, one month, if the person exercising such office shall reside within fifty miles of Calcutta, two months, if he shall reside beyond fifty miles, and three months, if he shall reside beyond one hundred miles from Calcutta, before the suing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained; nor shall any verdict be given against such Magistrate, until it be proved on trial that such notice hath been given; and in default of such proof, a verdict, with costs, shall be given for the defendant.

No rule or process to be made or issued on information against any such officer or Magistrate, until due notice has been given to him.

Nor any verdict against such Magistrate until notice proved.

Rep. 55 & 56 Vict., c. 19; XIV of 1870, s. 1 and Schedule.

26. And be it further enacted, that no Magistrate shall be liable, in any such case, to any personal caption or arrest, nor shall be obliged to put in bail, until he shall have declined to appear to answer, after notice given, as directed by this Act, and service of the process, directing his appearance, by himself or his Attorney.

No such Magistrate liable to arrest, etc., until he shall have declined to appear after notice.

Rep. 55 & 56 Vict. c. 19; XIV of 1870, s. 1 and schedule.

(1) See 12 G. 3, c. 63, s. 26 and Preface, p. viii.

STAT. 24 AND 25 VICT., CAP. 104.

An Act for establishing High Courts of Judicature in India.

*Dated 6th August, 1861.*ss. 1—3.
—

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those Presidencies respectively, such High Courts to be established in the said several Presidencies at such time or respective times as to Her Majesty may seem fit, and the High Court to be established under any such Letters Patent in any of the said Presidencies shall be deemed to be established from and after the publication of such Letters Patent in the same Presidency, or such other time as in such Letters Patent may be appointed in this behalf.

High Courts may be established in the several Presidencies of India.

2. The High Court of Judicature at Fort William in Bengal and at the Presidencies of Madras and Bombay respectively shall consist of a Chief Justice and as many Judges, not exceeding fifteen, ⁽¹⁾ as Her Majesty may from time to time think fit and appoint, who shall be selected from—

Constitution of High Courts.

1st.—Barristers of not less than five years' standing ; or,

2nd.—Members of the Covenanted Civil Service of not less than ten years' standing, and who shall have served as Zillah Judges, or shall have exercised the like powers as those of a Zillah Judge, for at least three years of that period ; or,

3rd.—Persons who have held Judicial Office not inferior to that of Principal Sudder Ameen or Judge of a Small Cause Court for a period of not less than five years ; or,

4th.—Persons who have been Pleaders of a Sudder Court or High Court for a period of not less than ten years, if such Pleaders of a Sudder Court shall have been admitted as Pleaders of a High Court :

Provided that not less than one-third of the Judges of such High Courts respectively, including the Chief Justice, shall be Barristers, and not less than one-third shall be Members of the Covenanted Civil Service. ⁽²⁾

(1) Increased to 20 by 1 & 2 Geo. V. c. 18, s. 1 (18th August 1911).

(2) By s. 3 of 1 & 2 Geo. V. c. 18, the Governor General in Council has power to appoint temporary Judges to act for 2 years. Such additional Judges shall not be taken into account in determining the proportions specified in this proviso.

22. 2-7.

Certain existing Judges herein named to be the first Judges of the High Court.

3. Provided always, that the persons who at the time of the establishment of such High Court in any of the said Presidencies are Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency shall be and become Judges of such High Court without further appointment for that purpose; and the Chief Justice of such Supreme Court shall become the Chief Justice of such High Court.

Tenure of office of Judges of High Courts.

4. All the Judges of the High Courts established under this Act shall hold their offices during Her Majesty's pleasure: Provided that it shall be lawful for any Judge of a High Court to resign such office of Judge to the Governor-General of India in Council or Governor in Council of the Presidency in which such High Court is established.

Precedence of Judges of High Courts.

5. The Chief Justice of any such High Court shall have rank and precedence before the other Judges of the same Court, and such of the other Judges of such Court as on its establishment shall have been transferred thereto from the Supreme Court shall have rank and precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid all the Judges of each High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.

Salaries, etc., of Judges of High Courts.

6. Any Chief Justice or Judge transferred to any High Court from the Supreme Court shall receive the like salary and be entitled to the like retiring pension and advantage as he would have been entitled to for and in respect of service in the Supreme Court, if such court had been continued, his service in the High Court being reckoned as service in the Supreme Court; and, except as aforesaid, it shall be lawful for the Secretary of State in Council of India to fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and Judges of the several High Courts under this Act, and from time to time to alter the same: Provided always, that such alteration shall not affect the salary of any Judge appointed prior to the date thereof.

Provision for vacancy of the Office of Chief Justice or other Judge.

7. Upon the happening of a vacancy in the office of Chief Justice, and during any absence of a Chief Justice, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some person has been appointed by Her Majesty to the office of Chief Justice of the same Court and has entered on the discharge of the duties of such office, or until the Chief Justice has returned from such absence; and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief

Justice, it shall be lawful for the Governor-General in Council, or Governor in Council, as the case may be, to appoint a person, with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the said High Court, and the person so appointed shall be authorised to sit and to perform the duties of a Judge of the said Court until some person has been appointed by Her Majesty to the office of Judge of the same Court, and has entered on the discharge of the duties of such office, or until the absent Judge has returned from such absence, or until the Governor-General in Council, or Governor in Council, as aforesaid, shall see cause to cancel the appointment of such acting Judge.

8. Upon the establishment of such High Court as aforesaid in the Presidency of Fort William in Bengal, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the same Presidency shall be abolished :

Abolition of
Supreme
Courts and
Sudder Courts.

And upon the establishment of such High Court in the Presidency of Madras, the Supreme Court and the Court of Sudder Adawlut and Foujdarry Adawlut in the same Presidency shall be abolished :

And upon the establishment of such High Court in the Presidency of Bombay, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Foujdarry Adawlut in the same Presidency shall be abolished :

And the records and documents of the several Courts so abolished in each Presidency shall become and be records and documents of the High Court established in the same Presidency.

9. Each of the High Courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency-towns as may be prescribed thereby ; and, save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction⁽¹⁾ and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

Jurisdiction
and powers of
High Courts.

10. *Until the Crown shall otherwise provide under the powers of this Act, all jurisdiction now exercised by the Supreme Courts of Calcutta, Madras, and Bombay respectively over inhabitants of such*

High Courts to
exercise same
jurisdiction as
Supreme Courts.

(1) See in the matter of the *Amrita Bazar Patrika* referred to in the Preface, ante, p. xviii.

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parts of India as may not be comprised within the Local limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras, and Bombay, shall be exercised by such High Courts respectively.

Repealed by 28 & 29 Vict., c. 15, s. 2, *post*.

Existing provisions applicable to Supreme Courts to apply to High Courts.

11. Upon the establishment of the said High Courts in the said Presidencies respectively, all provisions then in force in India of Acts of Parliament, or of any orders of Her Majesty in Council or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof respectively, so far as may be consistent with the provisions of this Act and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council.

Provision as to pending proceedings in abolished Courts.

12. From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings, and all previous proceedings in the said last-mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued, as nearly as circumstances permit, under and according to the practice of the abolished Courts respectively.

Power to High Courts to provide for exercise of jurisdiction by single Judges or Division Courts.

13. Subject to any laws or regulations which may be made by the Governor-General in Council, the High Court established in any Presidency under this Act may, by its own rules, provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice.

Chief Justice to determine what Judges shall sit alone or in Division Courts.

14. The Chief Justice of each High Court shall from time to time determine what Judge in each case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

See last para. of note to clause 36 of the Letters Patent of 1865, *post*.

High Court to superintend and to frame rules of practice for subordinate Courts.

15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns, and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such Courts, and also to prescribe

forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the Sheriff, Attornies, and all clerks, and officers of Courts, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled shall be used and observed in the said Courts, provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall before they are issued have received the sanction, in the Presidency of Fort William, of the Governor-General in Council, and in Madras or Bombay, of the Governor in Council of the respective Presidencies.

Superintendence.—Held that this clause does not override s. 435 of the Code of Criminal Procedure, so as to enable the High Court in the exercise of its powers of superintendence to interfere with an order passed by a Court having jurisdiction under Chap. XII of the Code, interference with which in revision is excluded by s. 435 (3) (See *Hurbullub Narain Sing v. Luchmeswar Prosad Sing*, 1. L. R., 26 Cal. 188; and *Mahadeo Kumwar v. Bisu*, 1. L. R., 25 All. 537, referred to; also *Maharaj Tewari v. Har Charan Rai* (1904), 1. L. R., 26 All. 144).

The High Court has power, under this clause, and clauses 28 & 29 of the Letters Patent, to stay proceedings when action is taken under s. 476 of the Code of Criminal Procedure by a Court subject to its powers of superintendence. Where a Court in a civil case, finds a document to be a forgery and, while an appeal against its decision is pending, takes proceedings in the Criminal Court under s. 476, the High Court will stay such proceedings if, on consideration of the circumstances, it is satisfied that they are oppressive and will prevent the party from conducting his appeal (*Jogiah v. Emperor* (1908), 1. L. R., 31 Mad. 510).

The Court will not interfere under this clause unless satisfied the applicant has been prejudiced (*Kulada Kinkar Roy v. Danesh Mir* (1905), 1. L. R., 32 Cal. 33. See also *Sukh Lal Sheikh v. Tarachand Ta* (1905), 1. L. R., 33 Cal., p. 68).

Where complaint dismissed by Presidency Magistrate under s. 203 of Criminal Procedure Code, High Court cannot direct a further enquiry under ss. 437 and 439 but has power to act under this clause (*Debi Bux Shroff v. Jutmal Dangarwall* (1905), 1. L. R., 33 Cal. 1282).

Held that it is doubtful whether the High Court exercising civil jurisdiction has power under this clause to stay criminal proceedings (*Hem Chandra Roy v. Atal Behari Ray* (1908), 1. L. R., 35 Cal. 909). The High Court cannot interfere under this clause with orders of a Subordinate Court on ground of error of Law, but only on error affecting jurisdiction (*Malik Protap Singh v. Khan Mohammed* (1909), 1. L. R., 36 Cal. 994).

A Magistrate authorised to hold an enquiry under the Extradition Act of 1903 is not subject to the Appellate jurisdiction of the High Court and the High Court will not interfere under this clause, with the order of the Magistrate (*Stallman v. the King-Emperor* (1911), 15 C. W. N., p. 737).

The Deputy Collector held that s. 310 A of the Civil Procedure Code did not apply to sales under the Landlord and Tenant Act (X of 1859). Held on an application in revision that the High Court had power to interfere under this clause (*Chaitan Patjosi Mohapatra v. Kunja Behari Patnaik* (1911), 15 C. W. N. 863).

16. It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Her Majesty may establish a High Court in

am. 18—19.

Western Pro-
vinces.

Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court, ⁽¹⁾ to consist of a Chief Justice and of such number of other Judges, with such qualifications as are required in persons to be appointed to the High Courts established at the Presidencies hereinbefore mentioned, as Her Majesty from time to time may think fit and appoint: and it shall be lawful for Her Majesty by such Letters Patent to confer on such Court any such jurisdiction, powers, and authority as under this Act is authorized to be conferred on or will become vested in the High Court to be established in any Presidency hereinbefore mentioned; and, subject to the directions of such Letters Patent, all the provisions of this Act having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as circumstances may permit, be applicable to the High Court established in the said territories, and to the Chief Justice and other Judges thereof, and to the person administering the government of the said territories.

Other or supple-
mental Charters
may be granted
within three
years after
establishment
of a Court.

17. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any time within three years after the establishment of any High Court under this Act, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty may think fit of the Letters Patent by which such Courts was established, and to grant and make such other powers and provisions as Her Majesty may think fit, and as might have been granted or made by such first Letters Patent, or without any such revocation as aforesaid, by like Letters Patent to grant and make any additional or supplementary powers and provisions which might have been granted or made in the first instance.

By 28 & 29 Vict., c. 15, s. 1, *post*, the time was extended to 1st Jan. 1866.

Territorial limits
of jurisdiction of
Courts may be
altered by order
in Council.

18. *It shall be lawful for Her Majesty, from time to time by Her Order in Council, to transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High Courts established under this Act, and generally to alter and determine the territorial limits of the jurisdiction of the said several Courts as to Her Majesty, with the advice of Her Privy Council, may seem meet.*

Repealed by 28 & 29 Vict., c. 15, s. 2, *post*.

Interpretation
of terms.

19. The word 'Barrister' in this Act shall be deemed to include Barristers of England or Ireland or Members of the Faculty of Advocates in Scotland; and the words 'Governor-General' and 'Governor' shall comprehend the officer administering the government.

(1) Sec 1 & 2 Geo. V, 18, s. 2, by which a High Court may be established under a 16 above, "whether or not included within the limits of the local jurisdiction of another High Court."

ABSTRACT OF LETTERS PATENT FOR THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Dated the 14th May 1862.

cl. 1—10.

Recites Act 28 & 24 Vict., c. 104.

Preamble.

1. Establishes High Court as from date of publication of these Letters Patent which were gazetted in the *Calcutta Gazette Extraordinary* on 1st July 1862, and in the ordinary Gazette on 2nd July 1862.

See second Letters Patent, clauses 1 and 2, *post*.

2. Ordains, that the High Court shall consist of a Chief Justice and thirteen Judges.

Number of Judges.

See second Letters Patent, cl. 3, *post*, and notes to s. 2 of 24 & 25 Vict., c. 104, *ante*.

3. Prescribes the form of declaration to be made by the Judges.

Declaration by the Judges.

See second Letters Patent, cl. 5, *post*.

4. Ordains, that the High Court shall have and use a seal, and provides for the custody thereof.

See second Letters Patent, cl. 6, *post*.

5. Ordains, that all mandatory process shall be used in the name of the Crown, and under seal.

See second Letters Patent, cl. 7, *post*.

6. Empowers the Chief Justice to appoint officers, subject to the approval of the Governor-General in Council.

See second Letters Patent, cl. 8, *post*.

Admission of Advocates, Vakeels, and Attornies.

7. Empowers the High Court to admit Advocates.

Advocates.

Authorizes such Advocates to appear and plead.

See second Letters Patent, cl. 9, *post*.

8. Empowers the High Court to admit Vakeels.

Vakeels.

Authorizes such Vakeels to appear, plead, and act.

See second Letters Patent, cl. 9, *post*.

9. Empowers the High Court to admit Attornies.

Attornies.

Authorizes such Attornies to appear and act.

See second Letters Patent, cl. 9, *post*.

10. Empowers the High Court to make rules for the admission of Advocates, Vakeels, and Attornies; and to remove, on reasonable cause, such Advocates, Vakeels, and Attornies.

Rules for admission of Advocates, Vakeels, and Attornies.

See second Letters Patent, cl. 10, *post*.

cl. 11—20.

Civil Jurisdiction of the High Court.

Local limits
of the ordinary
original civil
jurisdiction of
the High
Court.

11. Defines the local limits of the ordinary original civil jurisdiction of the High Court.

See second Letters Patent, cl. 11, *post*.

Original civil
jurisdiction
as to suits.

* 12. Gives the High Court original jurisdiction as to suits.

See second Letters Patent, cl. 12, *post*.

Extraordinary
original civil
jurisdiction.

13. Gives the High Court extraordinary original civil jurisdiction as to suits in Courts subject to its superintendence.

See second Letters Patent, cl. 13, *post*.

Appeal from
the original
Civil Jurisdic-
tion of the
High Courts to
its Appellate
Jurisdiction.

14. Ordains, that an appeal shall lie from the High Court in its Original Civil Jurisdiction to the High Court in its Appellate Jurisdiction.

See second Letters Patent, cl. 15, *post*.

Appeal from
the Civil
Courts in the
provinces.

15. Ordains, that the High Court shall be a Court of Appeal from the Civil Courts in the provinces from which there is now an appeal to the Court of Sudder Dewanny Adawlut.

Indian
Legislature.

Reserves to the Indian Legislature power to make laws relating to civil procedure.

See second Letters Patent, cl. 16, *post*.

Jurisdiction
as to infants
and lunatics.

16. Ordains, that the High Court shall have the like jurisdiction as to infants and lunatics as that now vested in the Supreme Court.

See Charter of the Supreme Court, cl. 25, *supra*; and second Letters Patent, cl. 17, *post*.

Insolvent
Court.

17. Ordains, that the Insolvent Court shall be held before a Judge of the High Court, and gives all necessary powers.

See second Letters Patent, cl. 18, *post*.

Law to be administered by the High Court at Fort William in Civil Cases.

In the exercise
of ordinary
original civil
jurisdiction.

18. Ordains, that such law or equity shall be applied by the High Court in its Ordinary Original Civil Jurisdiction to each case as would have been applied to it by the Supreme Court.

See second Letters Patent, cl. 19, *post*.

In the exercise
of extraordinary
original civil
jurisdiction.

19. Ordains, that such law or equity and rule of good conscience shall be applied by the High Court in the exercise of its extraordinary original civil jurisdiction to each case as would have been applied to it by the local Court having jurisdiction.

See second Letters Patent, cl. 20, *post*.

In the exercise
of appellate
jurisdiction.

20. Ordains, that such law or equity and rule of good conscience shall be applied by the High Court in its Appellate Jurisdiction to each case as would have been applied to it in the Court in which it was instituted.

See second Letters Patent, cl. 21, *post*.

Criminal Jurisdiction.

21. Gives the High Court ordinary original criminal jurisdiction within the limits of its ordinary original civil jurisdiction, and such jurisdiction as the Supreme Court has over persons beyond such limits.

Ordinary original criminal jurisdiction.

See Charter of the Supreme Court, cl. 19, *supra* ; and second Letters Patent, cl. 22, *post*.

22. Empowers the High Court, in its Ordinary Original Criminal Jurisdiction, to try persons brought before it in due course.

Jurisdiction as to persons.

See second Letters Patent, cl. 23, *post*.

23. Gives the High Court extraordinary original criminal jurisdiction over persons residing in the jurisdiction of any Court subject to the superintendence of the Sudder Nizamut Adawlut, with power to try any such persons on charges preferred by the Advocate-General, or any Magistrate, or other officer specially empowered in that behalf.

Extraordinary original criminal jurisdiction.

See second Letters Patent, cl. 24, *post*.

24. Allows the High Court, in its Original Criminal Jurisdiction, to reserve any points of law ; but, with that exception, allows no appeal to the High Court.

No appeal to the High Court from its Original Criminal Jurisdiction.

See second Letters Patent, cl. 25, *post*.

25. Empowers the High Court to review a case on any point of law reserved, or on the Advocate-General certifying that there are errors as to a point or points of law, or that a point or points of law should be further considered.

When points of law may be reviewed.

See second Letters Patent, cl. 26, *post*.

26. Ordains, that the High Court shall be a Court of Appeal from the Criminal Courts in the provinces from which there is a right of appeal to the Court of Sudder Nizamut Adawlut.

Appeal from Criminal Courts in the provinces.

Reserves to the Indian Legislature power to make laws relating to criminal procedure.

Indian Legislature.

See second Letters Patent, cl. 27, *post*.

27. Ordains, that the High Court shall be a Court of Reference and Revision from the Criminal Courts subject to its appellate jurisdiction, with the like power as is now exercised by the Court of Sudder Nizamut Adawlut.

Criminal cases referred to the High Court for trial or revision.

Reserves to the Indian Legislature power to make laws relating to criminal procedure.

Indian Legislature.

See second Letters Patent, cl. 28, *post*.

28. Empowers the High Court to direct the transfer of any criminal case or appeal from one Court to another.

Transfer of a case from one Court to another.

See second Letters Patent, cl. 29, *post*.

cl. 29—35.

Criminal Law.

Indian Penal Code.

29. Ordains, that offenders shall be punished under the Indian Penal Code.

Indian Legislature.

Reserves to the Indian Legislature the power to alter the Indian Penal Code.

See second Letters Patent, cl. 30, *post*.

Judges may be authorised to sit in any place by way of circuit.

30. Ordains, that the Governor-General in Council may, by commission, authorize any of the Judges of the High Court to sit in any place within the jurisdiction of any Court now subject to the superintendence of the Sudder Dewanny Adawlut or Sudder Nizamut Adawlut.

See second Letters Patent, cl. 31, *post*.

Admiralty and Vice-Admiralty Jurisdiction.

Civil.

31. Ordains, that the High Court shall have such civil and maritime jurisdiction as may now be exercised by the Supreme Court as a Court of Admiralty, or by any Judge of that Court as Commissary to the Vice-Admiralty Court, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as is now vested in any Commissioner under 39 & 40, Geo. III.

See Charter of the Supreme Court, cl. 26, *supra*; and second Letters Patent, cl. 32, *post*.

Criminal.

32. Gives the High Court such criminal jurisdiction as may be exercised by the Supreme Court as a Court of Admiralty, or by such Commissary or Commissioner.

See Charter of the Supreme Court, cl. 27, *supra*; and second Letters Patent, cl. 33, *post*.

Testamentary and Intestate Jurisdiction.

Repeal of Charter 14, Geo. III, as to part of ecclesiastical jurisdiction. Testamentary and intestate jurisdiction.

33. Repeals Charter 14, Geo. III, so far as it gives the Supreme Court ecclesiastical jurisdiction except as mentioned in cl. 34.

34. Gives the High Court the like power as that now exercised by the Supreme Court in relation to the granting of probates or letters of administration.

See Charter of the Supreme Court, cl. 22, *supra*; and second Letters Patent, cl. 34, *post*.

Matrimonial Jurisdiction.

Matrimonial jurisdiction.

35. Gives the High Court matrimonial jurisdiction over Christian subjects within the local limits of the ecclesiastical jurisdiction of the Supreme Court.

See second Letters Patent, cl. 35, *post*.

Powers of single Judges and Division Courts.

36. Provides, that any function of the High Court may be performed by any Judge or Division Court.

Single Judges
and Division
Courts.

See second Letters Patent, cl. 36, *post*.

Civil Procedure.

37. Ordains, that the proceedings in matters testamentary and intestate shall be regulated by the rules contained in the Charter 14, Geo. III, relating to probates and letters of administration ; and that the proceedings in matters matrimonial shall be regulated by the rules of the Court for Divorce and Matrimonial Causes in England, and that the proceedings in other civil suits shall be regulated by Act VIII of 1859.

Regulation of
proceedings.

Reserves to the Indian Legislature power to make laws relating to civil procedure.

Indian
Legislature.

See second Letters Patent, cl. 37, *post*.

Criminal Procedure.

38. Ordains, that the proceedings in criminal cases brought before the High Court in its Ordinary Original Civil Jurisdiction, and in other cases over which the Supreme Court now has jurisdiction, shall be regulated by the procedure now in use in the Supreme Court ; and in other cases by Act XXV of 1861.

Regulation of
proceedings.

Reserves to the Indian Legislature power to make laws relating to criminal procedure.

Indian
Legislature.

See second Letters Patent, cl. 38, *post*.

Appeals to Privy Council.

39. Allows an appeal to the Privy Council from the High Court in its Civil Appellate Jurisdiction, and in its Original Civil Jurisdiction, when exercised by the majority of the full number of Judges, subject, in either case, to the proviso that the matter is of the value of 10,000 rupees, or is declared by the Court to be a fit one for appeal.

From final
judgment in
civil cases.

See second Letters Patent, cl. 39, *post*.

40. Provides for the allowance of an appeal to the Privy Council from the interlocutory judgments of the High Court in civil cases.

From inter-
locutory
judgments.

See second Letters Patent, cl. 40, *post*.

41. Allows an appeal to the Privy Council from the High Court in its Original Criminal Jurisdiction, or in criminal cases where any point or points of law have been reserved ; provided the High Court shall declare that the case is a fit one for appeal.

From judg-
ments in
criminal cases,
etc.

See second Letters Patent, cl. 41, *post*.

Transmission of
proceedings.

42. Provides for the transmission of copies of proceedings in appeal to the Privy Council.

See second Letters Patent, cl. 42, *post*.

Records.

Regulation
from Govern-
ment.

43. Requires the High Court to comply with requisitions from Government for records, returns, and statements.

Provisions of
former Letters
Patent in-
consistent
with 24 and
25 Viet., c. 104,
and with these
Letters Patent,
to be void.

44. And it is our further will and pleasure that, from and after the establishment of the said High Court of Judicature at Fort William in Bengal, so much of the aforesaid Letters Patent granted by His Majesty King George the Third as is inconsistent with the recited Act and with these Letters Patent shall cease, determine, and be utterly void to all intents and purposes whatsoever.

28 AND 29 VICT., CAP. 15.

An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the new Courts.

Dated the 7th April 1865.

ss. 1—3.

WHEREAS it is expedient to extend the time fixed for granting fresh Letters Patent for the High Courts in India under the provisions of an Act passed in the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, intituled an Act for establishing High Courts of Judicature in India, and to make further provision than is in the said Act contained for empowering the alteration from time to time of the local limits of the said High Courts, and for the exercise, in places beyond the limits of the Presidencies, or places within and for which such High Courts are established, of the jurisdiction and power conferred by Her Majesty's Letters Patent on the said High Courts; Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Extends time for granting fresh Letters Patent to first January, 1866.

Extends time for granting fresh Charter. Repeals, ss. 10 & 18 of Charter Act.

2. Repeals ss. 10 and 18 of 24 & 25 Vict., c. 104.

3. It shall be lawful for the Governor-General of India in Council, by order, from time to time, to transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High Courts established or to be established under the said Act, and to authorize and empower any High Court to exercise all or any portion of the jurisdiction and powers conferred or to be conferred on it by Her Majesty's Letters Patent establishing the same, or any other Letters Patents issued by Her Majesty under the provisions of the above-recited Act of the twenty-fourth and twenty-fifth years of Her Majesty, within any such portions of Her Majesty's dominions in India, not included within the limits of the Presidency or place or places for which such High Court was established, as the said Governor-General in Council may from time to time determine; and also to exercise any such jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of such of the Princes and States of India in alliance with Her Majesty as the Governor-General in Council may, in manner aforesaid, from time to time determine, anything in the said recited Act

Empowers Governor-General in Council to alter local limits of jurisdiction of the High Courts.

And to give Jurisdiction over Christian subjects in Native States.

ss. 3—6.

of the twenty-fourth and twenty-fifth years of Her present Majesty notwithstanding.

See Proclamation No. 4366, *post*, p. 37, *providing for the continuance of the jurisdiction, formerly exercised by the Supreme Courts*. See also Notifications Nos. 853 and 854-I. B., *post*, p. 107, *as to original and appellate criminal jurisdiction over Christian British subjects in Native States*.

Crown.

4. Reserves power to the Crown to disallow any order of the Governor-General in Council made under s. 3.

When Act to
come into
operation.

5. Act to come into operation when published by the Governor-General in Council.

Indian Legis-
lature.

6. Preserves the power of the Indian Legislature. [*Gazette of India*, August 26th, 1865, p. 939.]

PROCLAMATION, No. 4366.

November 22nd, 1865.

UNTIL the Governor-General in Council shall otherwise provide, under the powers conferred by the Act 28 Vict., c. 15, all jurisdiction formerly exercised by the Supreme Courts of Calcutta, Madras, and Bombay, respectively, over the inhabitants of such parts of India as may not be comprised within the local limits of the Letters Patent issued under the Act 24 & 25 Vict., c. 104, establishing High Courts at Fort William, Madras, and Bombay, shall *subject to the provisions of the said Letters Patent*, be exercised in such High Courts respectively *to the intent that the jurisdiction exercised by the said High Courts respectively, at the time of the coming into operation of the said first mentioned Act, shall thenceforth, until such other provisions as aforesaid, continue and be maintained.*—*Gazette of India*, November 25th, 1865, p. 1194.

Jurisdiction
formerly ex-
ercised by
the Supreme
Courts
continued.

This Proclamation, made in supersession of a previous Proclamation, No. 1331, August 25th, 1865 (1), is, with the exception of the words in italics, a repetition of such previous Proclamation.

It was held that the first Proclamation failed to effect any extension of the High Court's original civil jurisdiction conferred by the Letters Patent, and that it was unnecessary to inquire into the operation of the second Proclamation, it having been conceded that if the first Proclamation did not give rise to the jurisdiction contended for, the second certainly did not do so.—*The Indian Carrying Company v. McCarthy*, 1 In. Jur., N. S., 61, Phear, J.

High Court's
original civil
jurisdiction not
extended by
the Proclama-
tion.

HOME DEPARTMENT.

NOTIFICATION, No. 2979.

Fort William, the 2nd April 1866.

With reference to the Notification, No. 3226, dated the 1st July 1862, published in the *Calcutta Gazette Extraordinary* of the same date, promulgating the Act 24 & 25 Vict., c. 104, "for establishing High Courts of Judicature in India," and the Letters Patent of the 14th May, 1862, constituting the High Court of Judicature for the Bengal Division of the Presidency of Fort William, and with reference also to the Notification, No. 1330, dated the 25th August, 1865, published in the *Gazette of India* of the 26th idem, promulgating the Act 28 Vict., c. 15, whereby the term for granting free Letters Patent for the High Courts in India was extended to the first day of January, 1866, the Governor-General in Council is pleased to direct the publication of the following Letters Patent for the High Court of Judicature at Fort William in Bengal, bearing date the 28th December, 1865.

By order of the Governor-General in Council.

E. C. BAYLEY,

Secy. to the Govt. of India.

**LETTERS PATENT ⁽¹⁾ FOR THE HIGH COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL.**

Dated the 28th December, 1865.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To all to whom these Presents shall come, greeting : Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth Years of Our Reign, intituled " an Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court should consist of a Chief Justice, and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared : Provided always, that the person who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Courts as aforesaid, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the said Presidency, should be abolished :—

Recital of Act
24 & 25 Vict.,
c. 104.

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency-town, as might be prescribed thereby ; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts

(1) The High Court was continued, not created, by these Letters Patent. It was created by the Letters Patent of 1862, (Earl of v. Augustus, 16 Bom. H. C. 118.)

in the same Presidency abolished under the said Act, at the time of the abolition of such last mentioned Courts :—

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the fourteenth day of May, in the Twenty-fifth Year of our Reign, in the Year of our Lord One thousand eight hundred and sixty-two, did, accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record ; and whereas We did thereby appoint and ordain, that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges,⁽¹⁾ and did thereby, in addition to the persons who at the time of the establishment of the said High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut, in the said Presidency respectively, constitute and appoint certain other persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court :—

And whereas on the Thirtieth day of January One thousand eight hundred and sixty-three, We did, in the manner in the said recited Act provided, direct and ordain that the said High Court should consist of a Chief Justice and fourteen Judges :—

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent :—

And whereas by the Act of the Twenty-eighth year of Our Reign, chapter fifteen, entitled “ an Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts ” ⁽²⁾, the time for issuing fresh Letters Patent has been extended to the First of January, One thousand eight hundred and sixty-six :—

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration

(1) See notes to s. 2 of 24 & 25 Vict., c. 104, *ante*, p. 60.

(2) See abstract of this Act, *ante*, p. 71.

of justice thereby, it is expedient that the said Letters Patent dated the Fourteenth of May, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent :—

1. Now know ye that We, upon full consideration of the premises, and of Our especial grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof ⁽¹⁾ as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Fourteenth Year of His Majesty King George the Third, dated the Twenty-sixth of March, One thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby. ⁽²⁾

Revocation of
Letters Patent
of 1862.

2. And We do by these presents grant, direct, and ordain, that, notwithstanding the revocation of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

High Court at
Fort William to
be continued.

Court of Record.—As to the jurisdiction of the High Court as a Court of Record to commit for contempt. See note at p. 241 of *Belchambers' Practice* under this head. See also judgment of the Special Bench in the matter of the *Amrita Bazar Patrika* (1913) 16 C. W. N., 1253, where the powers of the High Court in matters of criminal contempt of Court, and the previous cases are fully discussed, see also Preface, *ante*, p. xviii.

3. And We do hereby appoint and ordain, that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provisions shall be made by

Judges of the
said High Court
to be continued.

(1) Published 2nd April, 1866.

(2) See first Letters Patent, clauses 33 and 44, *ante*, pp. 68 and 70.

Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts, of Judicature in India.

cl. 3-4.
Clerks, etc., of
the said High
Court to be
continued.

4. And We do hereby appoint and ordain, that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal appointed by virtue of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

Declaration
to be made
by Judges.

5. And We do hereby ordain, that the Chief Justice and every Judge *who shall be from time to time appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration* ⁽¹⁾, before such authority or person as the Governor-General in Council may commission to receive it:—

“I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

The words in italics in this section have been substituted for “of” in the corresponding clause (3) of the first Letters Patent, *supra*. Both clauses are otherwise alike.⁽¹⁾

Seal.

6. And We do hereby grant, ordain, and appoint, that the said High Court of Judicature at Fort William in Bengal shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription: “The Seal of the High Court at Fort William in Bengal.” And We do further grant, ordain, and appoint, that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of the Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of s. 7 of the said recited Act; and We do further grant, ordain, and appoint that, whensoever it shall happen that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed, shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

This clause is exactly the same as cl. 4 of the first Letters Patent.

(1) See Indian Oaths Act, X of 1873. (By sec. 16 of which Official Oaths abolished.)

7. And We do hereby further grant, ordain, and appoint, that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

Writs, etc., to
issue in name
of the Court,
and under Seal.

This clause is exactly the same as cl. 5 of the first Letters Patent.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor-General in Council, and shall be either confirmed or disallowed by the Governor-General in Council, and it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors give, grant, direct, and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor-General in Council shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Appointment
of officers.

This clause is exactly the same as cl. 6 of the first Letters Patent.

Admission of Advocates, Vakeels, and Attornies.

9. And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attornies as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attornies shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

Powers of High
Court in admit-
ting Advocates,
Vakeels, and
Attornies.

See the first Letters Patent, clauses 7, 8, and 9, *supra*, by which Advocates, Vakeels, and Attornies were respectively authorized to appear and plead; to appear, plead, and act; and to appear and act for suitors. See also note to Chap. II, *post*.

In making rules for the qualifications, etc., of Advocates, Vakeels and Attornies.

10. And We do hereby ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels, and Attornies-at-law of the said High Court and shall be empowered to remove *or to suspend from practice*, on reasonable cause, the said Advocates, Vakeels, or Attornies-at-law; and no person whatsoever but such Advocates, Vakeels, or Attornies shall be allowed to act *or to plead for or on behalf of* any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

The words in italics in this clause are not in the corresponding clause (10) of the first Letters Patent. Both clauses are otherwise alike.

See rules as to the admission of Advocates and attorneys, Chap. I, *post*.

Even a strong case of suspicion is not enough to justify disciplinary action on a summary proceeding against an attorney, when there is a positive sworn denial and repudiation of the misconduct imputed; and the Court not being able, on the materials before it, to hold that the attorney's explanation was demonstrably false, the rule was discharged.

Procedure in the exercise of the Court's disciplinary jurisdiction discussed; previous cases referred to ⁽¹⁾ and the opinion expressed that though there is an insuperable obstacle in the way of the Court's adopting the English procedure in its entirety, it would be as well to approximate it as far as can be. "Here a preliminary enquiry before a professional body is impossible, but the English procedure suggests the expediency of initiating proceedings by a rule or motion on notice, calling on the attorney to answer the matter in the affidavit or affidavits of the applicant. Service should be personal, a copy of the affidavits should be served with the rule or notice of motion and the returnable date should allow sufficient time for an answer to be put in—ordinarily 10 days should suffice.

After the explanation has been considered it will then be for the Court to determine whether further proceedings should be taken, and if this be determined in the affirmative, then it would be right to request the Advocate-General, or some other person or body as the case may be, to take the necessary steps for that purpose. In case these further proceedings are taken, the same rules as to service should be observed, and there should be as a part of the rule or notice of motion, a general statement of the grounds on which the proceedings are based." *Held* also on the authority of *In re a Solicitor*, L. R., 25 Q. B. D., 17, that *anybody* was entitled to inform the Court of the misconduct of one of its officers. (In the matter of an attorney; Judgment of the Special Bench dated 12th June 1913).

Reasonable cause.—After an altercation, during the hearing, with one of the Judges, an Advocate of the Court attempted to defend his conduct by publishing in a newspaper, of which he was the editor, an article which was a libel, reflecting, not only on the Judge before whom he had appeared, but upon other Judges of the Court in their judicial capacity, and in reference to their conduct in the discharge of their public duties, and which amounted to a contempt of Court which might have been dealt with as such by the

(1) Rules issued "In the matter of an Attorney" on the following dates 15th April 1867, 8th January 1874, 11th February 1876, 5th March 1881, 18th June 1903, 5th August 1905, 6th June 1908, and 2nd September 1913.

High Court, *Held* that such publication constituted, "reasonable cause" for an order suspending the Advocate from practising. *Held* also that such publication was not excusable on the ground that it was written in his capacity as Editor and not as an Advocate. (In the matter of Sashi Bhusan Sarbadhicary, I. L. R., 29 All., 95.)

Remove or suspend.—See Legal Practitioners' Act (XVIII of 1870 as amended by XI of 1896) *Le Mesurier v. Wajid Hossain*, I. L. R., 20 Cal., 890. It is professional misconduct for an Advocate (same principle applies to a pleader) to stipulate for or agree to accept as his fee a share of the property the subject matter of litigation. (In the matter of an Advocate, 4 Cal., Law Journal, 259.)

* **Board of Examiners.**—See Chapter I, rules 51 and 52, *post*, p. 121.

Semble.—The Court has no jurisdiction to interfere with the discretion of the Board of Examiners and cannot, where there is a discretion imposed on any body, issue a writ of Mandamus to compel that body to exercise that discretion in any particular way, but can only compel the exercise of that discretion in a manner fair, candid and unprejudiced; and not arbitrary, capricious or biased, much less warped by resentment or personal dislike. Per Woodroffe, J. The Court cannot dispense with the production of the certificate mentioned in rule 116 of the Original Side of the High Court (now rule 51, Chap. I, *post*). The Court will not interfere with the conscientious exercise by the Examiners of the discretion which the Court has confided in them. (In the matter of Purna Chandra Dutt, I. L. R., 35 Cal., 915; 12 C. W. N., 873.)

To Act.—Giving instructions to counsel in a reference from the Small Cause Court is acting (Moran v. Dewan Ali Sirang, 8 B. L. R., 418).

Civil Jurisdiction of the High Court.

11. And We do hereby ordain, ~~that~~ the said High Court of Judicature at Fort William in Bengal shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law *made by competent legislative authority for India*, and, until some local limits shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta issued by the Governor-General in Council on the Tenth day of September in the year of Our Lord One thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

Local limits of the ordinary original jurisdiction of the High Court.

The words in italics in this clause have been substituted for the words "or regulations made by the Governor-General in Council" in the corresponding clause (11) of the first Letters Patent. Both clauses are otherwise alike.

Local limits.—See Proclamation, fixing the limits of Calcutta, issued by the Governor-General in Council on 10th September 1794; and Notifications No. 4078 P. D., and No. 4092 P. D., by the first of which Notification dated the 15th October 1913 the local limits were extended so as to include the area occupied by the Alipore Jail and Bhowanipore Road. Set out in Appendix T, *post*, p. 555; and see 555 Geo. III, c. 84, s. 1 [the only unrepealed section of that Statute], by which the Governor-General is authorized to extend the limits of the Towns of Calcutta, Madras, and Bombay. See also 28 and 29 Vict., c. 15, s. 3, *ante*, p. 71; and proclamations, *ante*, p. 73. See also 21 and 22 Vict., c. 106; and 2 and 3 Geo. V, c. 6, s. 1, sub s. (2).

. 14—15.

A Judge in the exercise of the O. O. C. J. of the High Court at Madras, directed a warrant to issue against the person of a judgment-debtor, and appointed a special bailiff to execute the warrant against the judgment-debtor, wherever he might be found in the Presidency of Madras. *Held* that the order was made without jurisdiction. *Sagore Dutt v. Ram Chunder Mitter* (1 Hyde, 136); *Monmothoath Dey v. Greender Chunder Ghose* (24 W. R., 366); *Jamuna Bhai v. Sadagopa* (I. L. R., 7 Mad., 56) referred to [*Rajah of Ramnad v. Seetharam Chetty* (1902), I. L. R., 26 Mad., 120]. See Section 136, C. P. C. (V of 1908).

Original jurisdiction as to suits.

12. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, *either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court*, or if the Defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within *such limits*; except that the *said High Court* shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed One hundred rupees.

The words "such limits," in italics, in this clause, have been substituted for the words "the local limits of the ordinary original jurisdiction of the said High Court" in the corresponding clause (12) of the first Letters Patent. The other words in italics in this clause are not in the corresponding clause of the first Letters Patent. In other respects both clauses are alike.

Leave to sue under this clause must be obtained before obtaining the admission of the plaint. *Kellie v. Fraser*, I. L. R., 2 Cal., 445. See also *Abdool Hamed v. Promothoath Bose*, 1 Ind. Jur. (N. S.) 218.

The leave must be distinctly sought for and obtained (*Jairam Narayan v. Atmaram* (1880), I. L. R., 4 Bom., 482).

It will not be given where the parties and witnesses reside at a long distance and the decree can be satisfied from property outside jurisdiction (*Radha Bibee v. Mucksoodum* (1874) 21 W. R., 204). See also *Sesagiri Row v. Nawab Askar Jung* (1907) I. L. R., 30 Mad., 438, where defendant an absent foreigner.

Leave does not cover an amended plaint. (*Rampertap v. Premsukh* (1891) I. L. R., 15 Bom., 93; and see *Shaw Wallace v. Gordhandher* (1905) (I. L. R., 30 Bom., 364).

The legality of an order giving leave to sue may form subject of an issue at the trial (*Nagamoney Mudliar v. Janakiram Mudliar*, I. L. R., 18 Mad., 142).

Where a defendant is added, who does not reside within the jurisdiction and against whom the cause of action has not arisen wholly within the jurisdiction, fresh leave must be obtained even if obtained when suit was originally filed (*Rampertap Samrathirai v. Foolibai*, I. L. R., 20 Bom., 767).

Properties within Calcutta were mortgaged to the plaintiff and also, with other properties out of Calcutta, to a second mortgagee. In a suit against the mortgagor and second mortgagee it was held that after the usual mortgage decree was made, the second mortgagee had the right to proceed against

the properties outside Calcutta for any balance due to him. That the restrictive words in this clause apply to the case of a plaintiff, but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is a defendant (*Kissory Mohun Roy v. Kali Charan Ghose* (1897) I. L. R., 24 Cal., 190; 1 C. W. N., 156).

Where plaint did not show that part of the cause of action arose within jurisdiction; *Held* that evidence could be given to show that—also that to allow an amendment of plaint, if necessary, did not cause a variation in the original cause of action (*Fink v. Buldeo Dass*, I. L. R., 26 Cal., 715).

Where leave under this clause has been granted and a suit thereupon instituted, if the suit is subsequently withdrawn, with liberty to bring a fresh suit, fresh leave should be applied for; the force of the original order granting leave is exhausted (*Sabhapathi Gurukkal v. Lakshmu Ammal* (1900) I. L. R., 24 Mad., p. 293).

Suits for land or other immoveable property.—Meaning of these words discussed (see *Delhi and London Bank v. Wordie* (1876) I. L. R., 1 Cal., 240; *Kellie v. Fraser*, *supra*; *Heralal Banerjee v. Nitambini Dassee*, I. L. R., 29 Cal., 315; and cases there referred to; see also *Sorabji v. Ruttonji* (1898) I. L. R., 22 Bom., at p. 704; *Vaghoji Kuverji v. Camaji Bomanji*, I. L. R., 29 Bom., 249). *Rungloll Lohca v. Wilson* (1898) I. L. R., 26 Cal., 204, which case was distinguished in *Timol v. Provas Chunder Mitter* (1908) I. L. R., 36 Cal., 59.

Where several joint mortgagors had effected an equitable mortgage by deposit of title deeds—one of them having no interest in any of the properties covered by the deposited deeds, within the O. O. C. J. *Held* the Court had jurisdiction (*Matigara Coal Co., Ltd. v. Shragors, Ltd.* (1911) I. L. R., 38 Cal., 824).

Where defendant broke through and entered the plaintiff Company's mine or land and carried away coal belonging to the plaintiff company: *Held* that the suit, so far as it sought to recover damages for carrying away the plaintiff's coal, was founded on a case of trespass *quare clausum fregit* which necessitated the title in respect of that coal being gone into and (following Calcutta decisions) was therefore a suit for land within the meaning of this clause. *Raj Mohan Bose v. East Indian Railway* (1872) 10 B. L. R., 241, distinguished (*Loofna Colliery Co. v. Bepin Behary Bose* (1912) I. L. R., 39 Cal., 739).

A suit for partition is a suit for land within the meaning of this clause (*Padamani Dassee v. Jagadamba Dasi*, 6 B. L. R., 134).

Where in a suit for partition the whole of the immoveable property is outside the local limits and only the moveable property within, leave cannot be granted (*Jairam Narayan v. Atmaram*, *supra*). In such a case the Court may decree partition of the moveable property declining to deal with the immoveable (*Abdul Karim Saheb v. Budurdin Saheb* (1905) I. L. R., 28 Mad., 216-487) but ordinarily a suit for partition should comprise the whole Estate; and it would be open to the defendants to show that a portion cannot fairly be divided without taking into consideration and dividing the rest (*Padamani Dassee v. Jagadamba Dasi*, *supra*).

Cause of action.—Means all those things necessary to give a right of action and in a suit for breach of contract, High Court has no jurisdiction, where leave not obtained, unless it is proved that the contract as well as the breach occurred within the local limits (*Seshagiri Row v. Nawab Askru Jung* (1904) I. L. R., 27 Mad., 494). See also *Doya Narain Tewary v. Secretary of State* (1887) I. L. R., 14 Cal., 256. *Motilal v. Surajmull* (1904) I. L. R., 30 Bom., 167.

Part of cause of action cannot be held to arise at a place where payment was not originally contracted for, merely because after performance of the

cl. 12—13.

contract and without any consideration a promise is made to pay at such place (Seshagiri Row v. Nawab Askur Jung, *supra*).

Dwelling within the jurisdiction.—Defendant whose domicile was in Mysore had come to Madras with a view to being enrolled as a Vakil, and was present in Madras when suit was instituted though he left next day before summons served. *Held* this gave jurisdiction (Srinivasa Moorthy v. Venkata Varada Ayyangar (1905) I. L. R., 29 Mad., 239⁽¹⁾). See the cases there considered). See also Fernandez v. Wray (1901) I. L. R. 25 Bom., 176.

Carrying on business.—A Railway Company is a 'person' 'carrying on business' within the meaning of this clause and may be sued at the place of its principal office. A Government may be presumed to dwell in its own Capital and a Government engaged in trade, though for purposes of State, to carry on business there. (See Rodricks v. Secretary of State (1912) 16 C. W. N. 747.) In that case a servant of the Eastern Bengal State Railway, having been prosecuted at Rungpur on a charge of criminal breach of trust and acquitted, filed a suit in the Calcutta High Court against the Secretary of State for damages. Leave under this clause was asked for and obtained—at the hearing, the order granting such leave was questioned, and the argument having proceeded on the basis that no part of the cause of action arose within the local limits it was *held* that such leave was not rightly granted. The learned Judge, though dissenting from the decision of the Appellate Bench in Doya Narain Tewary v. Secretary of State⁽²⁾ on the question as to whether the Secretary of State was a body corporate, and could be said to dwell or carry on business within the local limits—and agreeing with the decision of Mr. Justice Pigot in Bipro Das Dey v. Secretary of State⁽³⁾ held that the former decision was binding on him and dismissed the suit. On appeal (27th November 1912) it was held that the case of Doya Narain Tewary v. Secretary of State being a decision of a Bench of two Judges, long accepted as a governing authority, should be followed.

Leave of the Court.—The words as to leave being first obtained apply both to suits for land or other immoveable property, and also to all other cases (Balaram v. Ram Charandra (1898) I. L. R., 20 Bombay, 925, where it was stated that this had been the uniform practice of the three High Courts; and see decisions there referred to.

Rule 515-A of the Rules of the Calcutta Court passed in 1905 in so far as it authorised the Registrar or Master to grant leave under this clause *held ultra vires* (Laliteswar Singh v. Rameshwar Singh (1907) I. L. R., 34 Cal., 619, and 11 C. W. N., 649; Brij Coomary v. Alma Chand, 11 C. W. N., (1907), 663; King v. Secretary of State for India (1908), I. L. R., 35 Cal., 394, 12 C. W. N., 705).

In the last case it was held that the objection that the leave was *ultra vires* was one which could be waived by the defendant by his taking any step in the proceedings before applying to have the action dismissed. Moore v. Ganger, 25 Q. B. D. 244, and *In re* Jones v. James, 19 L. J. (Q. B.) 257, followed.

King v. Secretary of State was followed in suit 365 of 1911, S. M. Saraswati Dasse v. S. M. Biraj Mohini Dasse, Imam, J., 7th February 1913.

As to the concurrent jurisdiction of the High Court in cases in which an officer of the Small Cause Court is a party, or in suits whereof the amount or value of the subject matter exceeds Rs. 1,000, see Act XV of 1882, s. 21, and s. 22 as to costs in suits cognizable by the Small Cause Court but instituted in the High Court.

See ss. 17 and 120 (1) of C. P. C., V of 1908.

13. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to remove,

Extraordinary
original civil
jurisdiction.

(1) Upheld on appeal to the Privy Council. See 15 C.W.N., 741.

(2) I.L.R., 14 Cal., 256 (1886).

(3) I.L.R., 14 Cal., 262 (note), 1883.

and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

This clause is exactly the same as cl. 13 of the first Letters Patent.

Application is made to a Judge on the Original Side (*Doucett v. Wise* (1866), 1 In. Jur. 94; *Clarke v. Brojendro Kishore Roy Chowdhry, Fletcher, J.*, 20th January 1908; and see Chap. V, r. 1, *post*, p. 140, and note to r. 4 of Chap. II, *post*, p. 126).

Grounds for transfer.—That lower Court has dealt harshly and without discretion with applicant; and the decision turns mainly on points of law (*Kopilnath Sahai v. Government* (1872) 10 B. L. R., 168) or that difficult points of English law arise; and generally, where it appears to be a case that should not be tried in the Mofussil (*Doucett v. Wise supra*); and the interest of the applicant will be prejudiced if case not transferred (*Borrodaill v. Gregory, Bourke, Part II, Extraordinary O. C. J.*, 1) or on the ground that the parties and witnesses reside in Calcutta, that it would be less expensive to try suit here and that the parties desire the transfer, *Payne v. Administrator General*, 1 L. R., 5 Cal., 760.

See also *Harendra Lal Rai v. Sarvamangala Devi* (1897), 1 L. R., 24 Cal., 183, 1 C. W. N., 109. The conduct of the Judge may also be a ground, *Kapilnath Sahai v. Government, supra*.

The substantive law applicable is that of the lower Court. (*Ghose v. Anritomayee Dassee* (1869), 4 B. L. R., O. C. J., 1).

The High Court has power, apart from the Civil Procedure Code to restrain a party to a suit in High Court from proceeding with Small Cause Court suit (*Rash Behary Dey v. Bhowani* (1907), 1 L. R., 34 Cal., 97; also to transfer a suit from Small Cause Court (*Megan Lal v. Bombay Co.* (1905) 1 L. R., 7 Bom., 143; *In re Ralli* (1907) 1 L. R., 31 Bom., 239).

Court fees.—Under the Presidency S. C. Ct. Act when a suit is transferred to this Court under s. 39, the plaintiff is allowed credit to the extent of the institution fees paid by him in that Court. There is no provision (Statutory or otherwise) of a similar nature in the case of a transfer under this clause—but it has been held that the plaintiff is entitled to a certificate (which is signed by a Judge) as to the amount of fees paid by him in this Court, and that the case is a fit case to enable him to apply to the Board of Revenue for a refund. (See Extraordinary Suit No. 1 of 1901 from Sub-Judge of Kuluha, Sale, J., and Extraordinary Suit No. 1 of 1905; *Radhica Mohan Roy v. K. S. Bonnerjee*.)

14. And We do further ordain, that where Plaintiff has several causes of action against a Defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the Defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

There is no provision similar to this in the first Letters Patent.

An application under this clause to join a cause of action arising wholly

Joinder of several causes of action.

cl. 14-15.

Appeal from
the Courts of
original
jurisdiction to
the High Court
in its Appellate
jurisdiction.

out of the jurisdiction, can be made in a case in which leave to sue under clause 12 has been obtained. Such an application may be made at any time before the hearing, though it is advisable to apply on presentation of the Plaint (*Dobson v. The Krishna Mills, Ltd.* (1910) I. L. R., 34 Bom., 564).

15. And We do further ordain, that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the *judgment (not being a sentence or order passed or made in any criminal trial)* of one *Judge of the said High Court, or of one Judge* of any Division Court, pursuant to s. 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the *judgment [not being a sentence or order as aforesaid] of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being ;* but that the right of appeal from other judgments of *Judges of the said High Court, or of such Division Court*, shall be to Us, Our heirs or successors, in Our or their Privy Council as hereinafter provided.

The words "judgment not being" to "criminal trial," and the words "Judge of" to "one Judge" and the words "and that an appeal" to "time being," and the words "from other" to "Division Court," in italics, have been respectively substituted in this clause for the words "judgment in all cases of original civil jurisdiction," and the words "of one or more Judges of the said High Court," and the words "provided always that no such appeal shall lie to the High Court as aforesaid from any such decision made by a majority of the full number of Judges of the said High Court," and the words "in such cases," respectively, in the corresponding clause (14) of the first Letters Patent.

For meaning of judgment under this clause (see *Justices of the Peace for Calcutta v. Oriental Gas Co.*, 8 B. L. R., 452; *Ebrahim v. Fuckhrunnissa Begum*, I. L. R., 4 Cal., 534; *DeSouza v. Coles*, 3 Mad., 384; *Doucett v. Wise*, 2 Ind. Jur. N. S., 280; *Howard v. Wilson*, I. L. R., 4 Cal., 231; 2 C. L. R., 488; *Kishen Persad Panday v. Tiluckdhari Lall*, I. L. R., 18 Cal., 182).

The right of appeal under this clause is not taken away by s. 575 (now s. 98) of the Civil Procedure Code (*Gridharji v. Purushottam* (1884), I. L. R., 10 Cal., 814).

In the following cases orders were held appealable as being "judgments" under this clause.

Order made at settlement of issues fixing a distant date for hearing of the suit (*R. v. R.*, I. L. R., 14 Mad., 88). Decision of Division Bench in exercise of civil appellate jurisdiction when the Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges (*Surnomoyee v. Luchmееput Doogur* (1869) B. L. R., Sup. Vol., 694; 7 W. R., 32, 512; *Gridharji Ramanlalji* (1890) I. L. R., 17 Cal., 2).

Such a difference of opinion must be as to the final and complete decision of the appeal and not a difference of opinion upon one or more matters arising on the appeal (In the matter of *Omrac Begum*, 13 W. R., 310; see also *Hurbans Sahay v. Thakoor Persad*, I. L. R., 10 Cal., 108).

An order passed on a certificate given by the Commissioner subsequent to a decree referring accounts to him (*Hirji Jina v. Narran Mulji*, I. L. R., 12 Bom., 129).

An order passed by a single Judge under Act II of 1874, s. 27, allowing commission to the Administrator General (In the goods of *Lee Chengalroza*

Naicker Samasundram Chetty v. Administrator General, I.L.R., 1 Mad., 148).

Order refusing leave under clause 12 (*DeSouza v. Coles, supra*).

Order made by a Judge on the Original Side refusing to set aside an award (*Tooleseemoney Dassce v. Sudevi Dassce, I.L.R., 26 Cal. 361; 3 C.W.N., 347; Hurriah Ch. Chowdhury v. Kali Sunderi Debi, I.L.R., 9 Cal., 482, referred to*).

Where an application to set aside an award had been refused and subsequently judgment had been given according to the award *Held* no appeal lay from such judgment whether under this clause or under the Code. There being no appeal against the order refusing to set aside the award the court did not consider whether an appeal from such an order would lie (*Shib Kristo Daw & Co. v. Satis Chandra Dutt (1912) I.L.R., 39 Cal., 822*).

Order dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference (*Atlas Assurance Co., Ltd. v. Ahmedbhoy Habibhoy, 1903, I.L.R., 34 Bom. 1*).

Order refusing to confirm an award, *Howard v. Wilson, supra*.

Order for committal for contempt (*Navithoo v. Narotamdas Candas, I.L.R., 7 Bom., 5*).

Order on an application under s. 622 of the Civil Procedure Code, reversing decree of Small Cause Court. (*Vanangumdi v. Ramasami, I.L.R., 14 Mad., 406*.)

Order discharging a rule granted under s. 401 of the Criminal Procedure Code, 1882. (In the matter of *Narrondas Dhanji*—petition of *Jevervahu, I.L.R., 14 Bom., 555*.)

Order of the Judge presiding over the Privy Council Department of the High Court refusing to transmit to the Court of first instance for execution order of the Privy Council (*Hurriah Chunder Chowdhury v. Kali Sunderi Debi, I.L.R., 9 Cal., 482, 12 C. L.R., 511*).

Order on application for readmission of an appeal dismissed on failure to deposit costs of paper book (*Ramhari Sahu v. Madan Mohun Mitter (1896) I.L.R., 23 Cal., 339*. But see *Fatiunnessa v. Deoki Persad (1897), I.L.R., 24 Cal., 350, 1 C.W.N., 21*).

Order on an application under the Probate and Administration Act (V of 1881, s. 90). In the goods of *Indra Chundra Singh Saraswati Dasi v. Administrator General (1896) I.L.R., 23 Cal., 580*. See also *Fatiunnessa v. Deoki Pershad, supra*.

Order refusing an application to commit for contempt (*Mohendro Lal Mitter v. Annundo Coomar Mitter, I.L.R., 25 Cal., 236*).

Where judgment of lower Court confirmed under s. 575 of Civil Procedure Code by reason of one of the Appeal Judges agreeing on facts with lower Court (*Gossami Sri, 108, Sri Gridharji Maharaj Tickait v. Puroshotom Goswami, I.L.R., 10 Cal., 814*).

Order refusing to stay issue of Probate and discharge of the Receiver appointed in a Probate action (*Brij Coomaree v. Ramrick Dass, 5 C.W.N., 781*. See, however, *Gobind Lal Das v. Shib Das Chatterjee (1906) I.L.R., 33 Cal., 1343*).

Order dismissing an application by judgment creditor of an insolvent for payment to him of money in hands of the Official Assignee (*Punnithavelu Mudaliar v. Bhassam Ayyanger (1901), I.L.R., 25 Mad., 406*).

Order dismissing a claim to attached property (*Sabbapathi Chetti v. Narayanasami Chetti (1901), I.L.R., 25 Mad., 555*).

Order refusing to receive money as security for costs of appeal (*Vyasachary v. Keshavacharya* (1901), I.L.R., 25 Mad., 654).

Order, under s. 380 of Civil Procedure Code of 1882, O. 25, r. 1, of Code of 1908, on Plaintiff to give security (*Sahagiri Row v. Askar Jung* (1902), I.L.R., 26 Mad., 502).

Order of a single Judge of High Court, on a revision petition ordering respondent to be examined on commission (*Veerabadran Chetty v. Nataraja Desikar* (1905), I.L.R., 28 Mad., 28).

Order refusing to issue a commission for examination of witnesses (*Maruthal Muthoo Pillai v. Krishna Machorian* (1906), I.L.R., 30 Mad., 143).

Order of a single Judge on a revision petition under s. 622 (now s. 115, Civil Procedure Code). (*Rama Ayya v. Venkatachella Padayachi* (1907), I.L.R., 30 Mad., 311. But see *Sriramulu v. Ramosam*, I.L.R., 22 Mad., 109).

Order on a revision petition against decree in Small Cause Court, one Judge of the Bench hearing the petition being for a remand, the other of opinion that the case was not one for interference (*Narayanasami Reddi v. Osuru Reddi* (1901), I.L.R., 25 Mad., 548).

Order deciding the claim of relatives to be guardian of a minor (*Kristo Kiasor v. Kadermoyee* (1877) 2 C.L.R., 583; *In re Narrondas* (1890), I.L.R., 14 Bom., 555).

Order discharging a rule to set aside a sale (*Russick Lal Pal v. Romanath Sen* (1896), 1 C.W.N., xxvi).

Order refusing application by assignee of a plaintiff to be brought on record (*Commercial Bank v. Sabju Sahel* (1901) I.L.R. 24 Mad., 253).

Order of a single Judge in exercise of ordinary original criminal jurisdiction refusing an application of a prisoner under ss. 456 and 491, Criminal Procedure Code, for his release. (*In re Lyall* (1902) I.L.R., 29 Cal., 286.)

An appeal lies under this clause from the decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction (In matter of the *Ship Champion* (1889), I.L.R., 17 Cal., 66).

In the following cases orders were held to be "not appealable" as *not* being judgments under this clause.

Order that a writ of Mandamus should issue (Justices of the Peace for Calcutta *v. Oriental Gas Co.*, *supra*).

Order on settlement of issues that a hibbanama was invalid (*Ebrahim v. Fuckhruneessa Begum*, *supra*).

Order of a single Judge of the High Court on appeal remanding case to lower Court for trial of certain issues of fact (*Kali Kristo Pal v. Ram Chunder Nag*, I.L.R., 8 Cal., 147, 9 C.L.R., 461. See also *Gopinath Pati v. Moheshwar Pradhan* (1908) I.L.R., 35 Cal., 1096).

Order by a single Judge rejecting an application for leave to appeal *in forma pauperis* (*In re Raja Gopal*, I.L.R., 9 Mad., 447; see also *Appasami Pillai v. Soma Sundra* (1902), I.L.R., 26 Mad., 437, and cases there cited. Also *Banno v. Mehdi Hossein* (1889), I.L.R., 11 All., 375).

Order of a single Judge dismissing an application for the exercise of Court's extraordinary or revisional jurisdiction (*Hiralal v. Bai Ash*, I.L.R., 22 Bom., 891).

Order passed by the senior of 2 Judges of a Divisional Bench who differed in opinion dismissing application for review (*Raku Bibi v. Md. Musa Khan*, 4 B.L.R., A.C., 10; *Rughoo Bibee v. Noor Jehan*, 12 W.R., 459).

Order refusing to stay proceedings where plaintiff after being allowed to withdraw suit with leave to bring another, the payment of costs of former

suit not being a condition precedent (*Chitto v. Muzzur Hossain*, 3 Hyde, 212).

Order granting a certificate to appeal to the Privy Council (*Mowla Buksh v. Hodgkinson* (1875) 24 W.R., 150; *Tarachand Biswas v. Radha Jeebun Mustofee*, 24 W.R., 148; *Mowla Buksh v. Kishen Portap* (1876), I.L.R. Cal. 102, *Annirunnessa v. Behary Lal* (1876), 25 W.R., 529; *Lutf Ali v. Asgur* (1890) I.L.R. 17 Cal., 455. See also *Manly v. Patterson*, I.L.R., 7 Cal., 339, 9 C.L.R. 166).

Order of a Judge in the Privy Council Department refusing to extend the time for furnishing security and directing appeal to be struck off, no security having been given within the prescribed time (*Kishen Pershad Panday v. Tiluckdari Lal* (1891) I.L.R., 18 Cal., 182) followed in *Gobind v. Shiba* (1906), I.L.R., 33 Cal., 1323.

Order refusing to stay execution of a decree in the exercise of Court's discretion under s. 608 (O. 44, r. 13) of Civil Procedure Code (*Mahabir Prosad Singh v. Adhikari Kunwar*, I.L.R., 21 Cal., 473).

Order by one of two Judges of the Divisional Bench which issued a rule, making same absolute, the other Judge having meanwhile left India on furlough (*Aubhey Churn Mohunt v. Shamant Lochun Mohunt*, I.L.R., 16 Cal., 788; see also *Mulji Virji v. Bangabashi Sahai*, 9 C.W.N., 502).

Order of one Judge exercising revisional jurisdiction and reversing order of Magistrate granting sanction to prosecute (*Srinewasa Ayyangar v. Queen-Empress*, I.L.R., 17 Mad., 105).

Order of a single Judge under s. 588, cl. 28 (O. 43, r. 1 (a), Civil Procedure Code (*Vengasayyan v. Ramasami Ayyar*, I.L.R., 10 Mad., 422).

Final decree in the suit passed by a Judge of High Court when hearing an appeal under s. 588 (s. 104), Civil Procedure Code, instead of merely remanding case (*Sunkaran v. Raman Kutti*, I.L.R., 20 Mad., 152).

Order of a single Judge of High Court dismissing an appeal against order of District Judge remanding suit for trial by the Munsiff who had dismissed it on a preliminary point (*Vasudora Upadhyaya v. Visvaraja Thirthasami*, I.L.R., 20 Mad., 407).

Order refusing to send for a record on a petition filed under s. 25 of Provincial Small Cause Court Act (*Venkatarama Ayya v. Madalai Amunal*, I.L.R., 23 Mad., 169; see also *Puthekudi Abdul v. Puvakka Kunthikutti* (1904), I.L.R., 27 Mad., 340).

Order by a single Judge refusing stay of execution (*Durga Prasada Nayadu v. Mulikajuna Prasada Nayadu* (1901), I.L.R., 24 Mad., 358).

Order directing Receiver to advance money to a guardian *ad litem* for the defence (*Kuppusami Chetti v. Rathnavelu Chetti* (1901), I.L.R., 24 Mad., 511).

Order of a single Judge of High Court dismissing an application for exercise of Courts extraordinary or revisional powers (*Kalu Sundari Debi v. Hurriah Chunder Chowdhury* (1880), 7 C.L.R., 543; (1881), I.L.R., 6 Cal., 594; (1883), I.L.R., 9 Cal., 482, L.R., 10 I.A., 4).

An order refusing to enlarge the time for preferring an appeal already time barred (*Gobind Lal Das v. Shiba Dass Chatterjee* (1906), I.L.R., 33 Cal., p. 1323, distinguishing *Brij Coomaree v. Ramrick Dass*, *supra*).

16. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts *subject to its superintendence*, and shall exercise appellate jurisdiction in such cases

Appeal from
Courts in the
Provinces.

as are subject to appeal to the said *High Court* by virtue of any laws or regulations now in force.

The words "subject to its superintendence," and the words "*High Court*," in italics, have been respectively substituted in this clause for the words "whether within or without the said Bengal Division from which there is now an appeal to the Court of the Sudder Dewanny Adawlut at Calcutta," and the words "Court of Sudder Dewanny Adawlut," respectively, in the corresponding clause (15) of the first Letters Patent. The words "or shall become subject to appeal to the said *High Court* by virtue of such laws and regulations relating to civil procedure as shall be hereafter made by the Governor-General in Council," at the end of the corresponding clause of the first Letters Patent, have been omitted from this clause.

Jurisdiction
as to infants
and lunatics.

17. And We do further ordain, that the said *High Court* of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics *within* the Bengal Division of the Presidency of Fort William as that which *was vested in the said High Court immediately before the publication of these Presents*.

The word "*within*" and the words "*was vested*" to "*these presents*," in italics, have been respectively substituted in this clause for the words "whether within or without," and the words "is now vested in the said Supreme Court at Calcutta," respectively, in the corresponding clause (16) of the first Letters Patent.

See Charter of the Supreme Court, cl. 25, *supra*; the Indian Majority Act IX of 1875; the Guardian and Wards Act (VIII of 1890); and the Act for consolidating and amending the law relating to Lunacy, IV of 1912, which repealed Act XXXIV of 1858.

See also the Rules in Ch. XXX, *post*, p. 300.

The Court refused under this clause to appoint a guardian of the person and property of a minor not a European British Subject, living outside the limits of its O. O. C. J. (*In re* Srish Chunder Sing (1894), I.L.R., 21 Cal., 206).

In the matter of E. C. T. Schorn and another, 30th August 1900, Amir Ali, J., made an order where the minors being European British Subjects, were residing outside the local limits.

See the Guardian and Wards Act VIII of 1890. It was held that under that Act a guardian cannot be appointed of the property of a minor member of a Mitakshara joint family and possessed of no separate Estate (*Sham Kuar v. Mohanundo Sahay* (1891), I.L.R., 19 Cal., 301; see also *Virupakshappa v. Nilgangova* (1894), I.L.R., 19 Bom., 309; *Jhabbu Singh v. Ganga Bishan* (1895), I.L.R., 17 All., 529; *Bandhu Prasad v. Dhiraji Kuar* (1898), I.L.R., 20 All., 400). In a case in 1900 *In re* Manilal Hurgovan, I.L.R., 25 Bom., 353, it was held that the Court had power under its *general jurisdiction* and apart from the Act to make an order appointing a guardian of a minor member of a joint family, but that such power should be exercised with the greatest caution. The applicant in that case was the Kurta. This case would, however, appear to have been overruled. See *Bindaji v. Mathurabai* (1905), I.L.R., 30 Bom. 152, where at p. 154, it was said: "It must now be taken as established that a guardian of the property cannot be appointed for a minor whose only proprietary interest is as co-parcener with adults in the joint family property. This incompetence rests on the view that the interest of such a co-parcener "is not individual property at all, and that therefore a guardian, if appointed, would have nothing to do with the family property." *Gharib-ul-lah v. Khalak Singh* (1903), L.R., 30 I.A., 165, at p. 170."

In the case in I.L.R., 30 Bom., it was, however, held that this principle did not apply when *all* the co-parceners are infants and a guardian is appointed of all (*Luigangowda v. Gungabai* (1896), P.J., 521, cited); and, in *Ram*

Chandra Vasudev v. Krishnarao Vasudev (1908), I.L.R., 32 Bom., p. 259), it was held that when, in such a case as the last, one of the co-parceners comes of age, the guardianship ceases and the Court is bound to hand over the property to the adult.

18. And We do further ordain, that the Court for relief of insolvent debtors at Calcutta shall be held before one of the Judges of the said High Court of Judicature at Fort William in Bengal, and the said High Court, and any such Judge thereof, shall have and exercise, *within* the Bengal Division of the Presidency of Fort William, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.

Provision with respect to the Insolvent Court.

The word "*within*," in italics, in this clause, has been substituted for the words "*whether within or without*" in the corresponding clause (17) of the first Letters Patent.

The first Act to provide for the Relief of Insolvent debtors in the East Indies was 9 Geo. 4, c. 73, dated 19th July 1828.

By that Act it was provided that from and after the 1st March 1829 there should be holden, in Calcutta, Madras and Bombay separate Courts for the relief of insolvent debtors which Courts should be Courts of Record and styled "*The Courts for the relief of Insolvent Debtors.*" The Supreme Courts were empowered to appoint officers to transact the business of such Courts and to act as common Assignees, examiners and ministerial officers of such Courts, and to make rules to regulate their proceedings, or as to notices to creditors or as to costs or Table of Fees, and such Courts "*within and throughout the British territories under the Government of the United Company*" were given the like powers as to issuing commissions to take evidence, enforcing attendance of witnesses, production of books, etc., and of summoning examining and enforcing the attendance of an insolvent debtor, his wife or any person able to give information as to his debts, estates or effects as were possessed by the Supreme Courts or as possessed by Commissioners of Bankrupt under 6 Geo. IV, c. 16. The Courts were also empowered to fine or commit for contempt, but were to have no power to award costs except in cases expressly permitted by the Act. The Court was to be held (in Calcutta) once a month, or oftener if need be, by a Judge of the Supreme Court; only Advocates or attorneys of the Supreme Courts were admitted to practise in the Insolvent Court. By s. 4 any person aggrieved could appeal to the Supreme Court or, if not sitting, to one of the Judges thereof, by petition, the order made on appeal being final. That Act, by s. 81, was to continue in force till 1st March 1833. This time was extended by various enactments (s. 2 and 3 Will. IV, c. 43; 4 and 5 Will. IV, c. 79; 6 and 7 Will. IV, c. 47; 3 and 4 Vict., c. 80; and 9 and 10 Vict., c. 14) and was repealed by 11 and 12 Vict., c. 21, dated 9th June 1848. But though the Act was repealed, the Courts established thereunder were continued as Courts of Record "*with the same powers as heretofore.*"⁽¹⁾

By clause 17 of the first Letters Patent it was ordered that the Court for the relief of Insolvent debtors should be held before one of the Judges

(1) In the argument in the matter of Ramkisen, *supra*, p. 24, it was contended that, though by this clause 18 the jurisdiction as to relief was limited, yet by reason of ss. 2 & 4 of 11 & 12 Vict., c. 21, the auxiliary powers of the Court were wider, and that it had the power to issue a warrant to arrest a man in Benares, and that for certain purposes the 3 High Courts (of Calcutta, Madras and Bombay) had concurrent jurisdiction, extending over the whole of British India. On the other side it was contended that the Insolvency jurisdiction given by the Letters Patent was a narrower one. As stated (p. 24) the point was never decided.

See now section 100 of Act III of 1900 under which a warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Criminal Procedure Code (Act V of 1898).

See also Rule 42 of the Insolvency Rules, *post*, p. 568.

cl. 18—21.

of the High Court and that such Judge should have an exercise "*within and without*" the Bengal division of the Presidency of Fort William, such powers * * * as are constituted by the laws relating to insolvent debtors in India. By the present clause 18 "*within*" has now been substituted for "*within and without*." By the Presidency Towns Insolvency Act III of 1909, s. 127, so much of 11 & 12 Vict., c. 21, as had not been repealed, was repealed, but by sub-clause (2) of that section it is provided that, notwithstanding the repeal, proceedings under a petition under the old Act, pending at the commencement of the new Act, shall, except in so far as any provision of the new Act is expressly applied to pending proceedings, continue and all provisions of the old Act shall, except as aforesaid, apply thereto.

Law to be administered by the High Court of Judicature at Fort William in Bengal.

By the High Court in the exercise of ordinary original civil jurisdiction.

19. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said *High Court* of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

The words "*High Court*," in italics, in this clause, have been substituted for the words "*Supreme Court, Calcutta*," in the corresponding clause (18) of the first Letters Patent. The words "*until otherwise provided*," in the corresponding clause of the first Letters Patent, between the words "*equity shall*" and the words "*be the law*," have been omitted from this clause.

See *Madhub Chunder Paramanick v. Rajcoomar Dass* (1874) 14 B. L. R., p. 76.

The law to be administered is the law or equity which would have been applied in the Supreme Court, modified by legislative enactment since the establishment of the High Court in 1862. As to the law administered by the Supreme Court see *Proface, ante*, p. xix.

In the exercise of extraordinary original civil jurisdiction.

20. And We do further ordain that, with respect to the law or equity and the rule of good conscience to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

This clause is the same as cl. 19 of the first Letters Patent, except that the words "*until otherwise provided*," in the corresponding clause of the first Letters Patent, between the words "*conscience shall*" and the words "*be the law*," have been omitted from this clause.

See *Clarke v. Brojendro Kishore Roy Chowdhury*, I. L. R., 36 Cal., 433; (1912) L. R. 39 I. App. 163.

By the High Court in the exercise of appellate jurisdiction.

21. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law

or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

This clause is exactly the same as cl. 20 of the first Letters Patent.

Criminal Jurisdiction.

22. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons, both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these Presents.

Ordinary original jurisdiction of the High Court.

The words in italics in this clause have been substituted for the words "in respect of all persons beyond such limits over whom the said Supreme Court at Calcutta now has criminal jurisdiction," in the corresponding clause (21) of the first Letters Patent.

See Preface, *ante*.

As to original and appellate criminal jurisdiction over European British subjects, being Christians, resident in certain native states, etc., see Notifications Nos. 853 and 854 L. B., *post*, p. 107.

Jurisdiction over subjects in native states.

See Reg. v. Mears, 14 B. L. R., 106, and 7 Bom. H. C. Rep. Cr. 6.

See in matter of Lyall in note to cl. 28, *post*, p. 95.

23. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

Jurisdiction as to persons.

This clause is exactly the same as cl. 22 of the first Letters Patent.

See Indian Criminal Law Amendment Act (Special Tribunals) XIV of 1908, to provide for the more speedy trial of certain cases.

Procedure.—All such cases to be sent up complete.

(a) Depositions, exhibits, etc., in paper book for Judges and counsel.

(b) Vernacular documents to be properly translated.

(c) When paper books and record have been delivered to the Clerk of the Crown and notice thereof given by that officer to the Chief Justice, application should be made by the Advocate General to the Chief Justice to form a Special Bench and fix a day for trial.

(d) Upon a Bench being formed and a day fixed, the trial will proceed without interruption. It is extremely improbable that any adjournment will be granted (see correspondence between Registrar O. S. and Legal Remembrancer February (1909).

Barriaters have the right of exclusive audience in cases before the Special Tribunal under Act (*In re Barristers and Vakils*, 13 C.W.N., 605).

24. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have extraordinary original criminal jurisdiction.

Extraordinary original criminal jurisdiction.

cl. 24—25.

original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the *said High Court*, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

The words in italics in this section have been substituted for the words "Sudder Nizamut Adawlut, whether within or without the Bengal Division of the Presidency of Fort William," in the corresponding section (23) of the first Letters Patent.

Powers under this clause not to be invoked until all other remedies provided by law have been exhausted (*Empress v. Rajcoomar Singh*, I.L.R., 3 Cal., 573).

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

25. And We do further ordain, that there shall be no appeal to the said High Court of Judicature at Fort in William Bengal from any sentence or order passed *or made* in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

This clause, with the exception of the words in italics, is the same as cl. 24 of the first Letters Patent.

The discretion exercised by the Judge under this clause cannot be reviewed by the High Court under cl. 26 (*Reg. v. Prestonjee Dinshaw* (1873) 10 Bom. H. C., 75; following *Reg. v. Dayal Jairaj*, 3 Bom. H. C. 28).

High Court to review on certificate of the Advocate-General.

26. And We do further ordain, that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General, that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

This clause is exactly the same as cl. 25 of the first Letters Patent.

Charge to Jury.—See *Queen-Empress v. Shib Chunder Mitter*, I.L.R., X Cal., 1079; *Queen-Empress v. O'Hara*, I.L.R., 17 Cal., 642.

Merchant Shipping Act.—*Queen-Empress v. Barton* I.L.R., 16 Cal., p. 239.

A Sessions Judge sentenced a prisoner to rigorous imprisonment in a case where the crime was punishable only with simple imprisonment. *Held* this error could be reviewed under this clause, on a certificate by the Advocate-General (*Reg. v. Yad Ali Khan*, 1 Ind. Jur. N. S., 424).

In considering under this clause a point reserved, the High Court has power to review the whole case, and if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury, to pass sentence and judgment (*Reg. v. Navraji v. Dadabhai*, 9 Bom. 358; and see *Imperatrix v. Pitamber Jina* (1877) I.L.R., 2 Bom., 61). (But see *Emperor v. Narayan Raghunath Patki* (1907) I.L.R., 32 Bom., 111.)

S. 167 of Evidence Act applies to cases heard by the High Court when exercising its powers under this clause (*Queen-Empress v. McGuire*, 4 C. W. N., 433; see also *Reg. v. Navroji Dadabhai*, *supra*).

27. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts *subject to its superintendence*, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the *said High Court* by virtue of any law now in force.

Appeals from Criminal Courts in the Provinces.

The words "subject to its superintendence," and the words "*said High Court*," in italics, have been respectively substituted in this clause for the words "whether within or without the said Bengal Division from which there is now an appeal to the Court of Sudder Nizamut Adwlut at Calcutta," and the words "Court of Sudder Nizamut Adawlut" respectively, in the corresponding clause (26) of the first Letters Patent. The words "or shall become subject to appeal to the said High Court by virtue of such laws or regulations relating to the criminal procedure as shall be hereafter made by the Governor-General in Council," at the end of the corresponding clause of the first Letters Patent, have been omitted from this clause.

As to original and appellate criminal jurisdiction over Christian British subjects in Native States, see Notifications Nos. 853 and 854 I.B., *post*, p. 107.

28. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of Reference and Revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session Judges, or by any other officers *now* authorized to refer cases to the *said High Court*, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as are now subject to reference to, or revision by, the *said High Court*.

Hearing of referred cases and revision of criminal trials.

The word "*now*," in italics, in this clause, is not in the corresponding clause (27) of the first Letters Patent. The words "*said High Court*" and the words "*High Court*," in italics, have been respectively substituted in this clause for the words "Sudder Nizamut Adawlut," and the words "Court of Sudder Nizamut Adawlut, whether within or without the Bengal Division of the Presidency of Fort William, or shall become subject to such reference to, or revision by, the said High Court by virtue of such laws or regulations relating to criminal procedure as shall be hereafter made by the Governor-General in Council," respectively, in the corresponding clause of the first Letters Patent.

As to the revisional jurisdiction of the High Court over European British subjects, see note to this clause in Broughton's Civil Procedure Code, Ap. 21.

The High Court can under this clause interfere with an improper order made by a Presidency Magistrate (*Colville v. Kristo Kishore* (1898) 3 C. W. N., 598; L.L.R., 26 Cal. 746).

Queen-Empress v. Budara Jamin (1891) I. L. R., 14 Mad., 121.

The jurisdiction which the High Court exercises in hearing a case submitted to it under s. 307 of the Criminal Procedure Code is not its original criminal jurisdiction but it hears the case as a Court of Reference in the

cl. 28—31.

High Court may direct the transfer of a case from one Court to another.

exercise of the jurisdiction vested in it by cl. 28 of the Letters Patent which is co-extensive with its Appellate jurisdiction (In matter of Lyall, I.L.R., 29 Cal. 286).

29. And We do further ordain, that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

This clause is exactly the same as cl. 28 of the first Letters Patent.

See the following cases (Sitapalhi v. Queen (1883) I.L.R. 6 Mad. 32; Reg. v. Nabadip Goswami (1868) 1 B.L.R., Cr. 15; Lolit Mohun v. Surajkanta (1901) I.L.R., 28 Cal. 709).

The High Court has power to remove a case from the Mofussil to the High Court for trial. (Reg. v. Amir Khan (1871) 7 B. L.R., 240), and *held per* Phear, J., a single Judge sitting on the original side has power to entertain the application for removal.

Criminal Law.

Offenders to be punished under Indian Penal Code.

30. And We do further ordain, that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, Reference, or Revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or *by any Act amending or excluding the said Act which may have been passed prior to the publication of these Presents*, shall be liable to punishment under the said Act or Acts, and not otherwise.

The words in italics in this clause are not in the corresponding clause (29) of the first Letters Patent. The words "subject nevertheless to such alterations, modifications, and additions in and to such Code as may have been or may be prescribed by any Acts or Regulations made by the Governor-General in Council," at the end of the corresponding clause of the first Letters Patent, have been omitted from this clause.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

Judges may be authorized to sit in any place by way of circuit or special commission.

31. And We do further ordain, that whenever it shall appear to the Governor-General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the *said High Court*, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, *the proceeding in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.*

The words "said High Court," and the words "the proceeding" to "for India," in italics, have been respectively substituted in this clause for the words "Sudder Nizamut Adawlut at Calcutta, whether within or without the Bengal Division of the Presidency of Fort William," and the words "and the Governor-General in Council shall, by his commission for that purpose, authorize and direct any of the Judges of such court to hold sittings in such place or places accordingly, at or within such times as by such commission may be authorized or directed, the Judge or Judges acting under such commission in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the said High Court, as the case may be, in its ordinary place of sitting," respectively, in the corresponding clause (30) of the first Letters Patent.

Admiralty and Vice-Admiralty Jurisdiction.

32. And We do further ordain that the said High Court of ^{Cl. 11.} Judicature at Fort William in Bengal shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said *High Court* as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as *may now be exercised by the said High Court.*

The words "High Court," and the word "of," and the words "may now be exercised by the said High Court," in italics, have been respectively substituted in this clause for the words "Supreme Court," and the words "by any Judge of the said Court as Commissary to the," and the words "is now vested in any Commissioner or Commissioners appointed by us or our predecessors, under the powers given by an Act passed in the Session of Parliament held in the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, for establishing further regulations for the government of the British Territories in India and the better administration of justice within the same," respectively, in the corresponding clause (31) of the first Letters Patent. The word "Court" in the corresponding clause of the first Letters Patent, between the words "Vice-Admiralty" and the words "and also," have been omitted from this clause.

Admiralty Jurisdiction was first given in 1774.

See clauses 26 and 27 of Supreme Court Charter and note to latter clause, *ante*, p. 41.

Vice-Admiralty.—By section 25 of 39 and 40 Geo. III, c. 79, dated 28th July 1800, His Majesty was empowered to issue a Commission from His High Court of Admiralty in England for the trial and adjudication of prize causes and other maritime questions arising in India, and to nominate all or any of the Judges of the Supreme Courts at Calcutta or Madras or of the Court of the Recorder at Bombay, either alone or jointly with any other person to be named in such commission, to be commissioners for the purpose of carrying such commission into execution.

The authority of the Vice-Admiralty Court at Calcutta, derived from the King's Commission, dated 21st January 1808, was continued first by a Commission, dated the 19th July 1822⁽¹⁾ and then continued by Her Majesty's Commission, dated 21st August 1843,⁽²⁾ appointing "Sir Lawrence Peel,

(1) *Smout & Ryan, Ap., p. 1.*

(2) *Belchambers' Ra. and Co., Ap. U, p. 450.*

Knight, and the Chief Justice of Bengal for the time being, and the person executing the duties of such office to be our Commissary in the Vice-Admiralty Court of Calcutta and territories thereto belonging," and authorizing such Commissary "to take cognizance of and proceed in all causes, civil, and maritime, and in complaints, contracts, offences, or suspected offences * * * and in any matter, cause or thing, business or injury whatsoever, done or to be done, *as well in, upon, or by the sea,* * * * and also to search and inquire for and concerning all goods of traitors, pirates, manslayers, felons, fugitives, * * * and concerning mahem * * * fishes royal * * * casualties at sea * * * and maritime crimes whatsoever done and committed, *as well in and upon the high sea, as all ports,* "etc.

By 2 William 4, c. 51 (23rd June 1832) to obviate doubts "as to the jurisdiction of Vice-Admiralty Courts in His Majesty's possessions abroad with respect to suits for seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to His Majesty's service at sea, salvage, and droits of Admiralty," it was enacted (s. 6) "that in all cases where a ship or vessel, or the master thereof shall come within the local limits of any Vice-Admiralty Court, it shall be lawful for any person to commence proceedings in any of the suits hereinbefore mentioned in such Vice-Admiralty Court, notwithstanding the cause of action may have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits."

By section 9 of the High Courts Act of 1861 (24 and 25 Vict., c. 104) each of the High Courts is to "exercise all such admiralty and Vice-Admiralty jurisdiction, Original and Appellate," as Her Majesty may by Letters Patent grant and direct.

The Letters Patent of 14th May 1862, constituting the High Court of Bengal, gave that Court (clause 31) "all such civil and maritime jurisdiction as may now be exercised by the Supreme Court as a Court of Admiralty or by any Judge of that Court as Commissary to the Vice-Admiralty Court, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as is now vested in any Commissioner or Commissioners under 39 and 40 Geo. III⁽¹⁾; and also gave that Court (cl. 32) "such criminal jurisdiction as may be exercised by the Supreme Court as a Court of Admiralty, or by such Commissary or Commissioner or Commissioners."

The jurisdiction so given to the High Court by clauses 31 and 32 of the Letters Patent, 1862, was continued by clauses 32 and 33 of the Letters Patent, 1865.

It has been held that this jurisdiction is not more than the jurisdiction which was possessed by Courts of Admiralty antecedent to the passing of 3 and 4 Vict., c. 65⁽²⁾ except in so far as it has been extended to slave trade questions by 2 and 3 Vict., c. 73.

It has also been held that the Vice-Admiralty Acts, 1840, 1861 and 1863 (3 and 4 Vict., c. 65, 24 Vict., c. 10 and 26 and 27 Vict., c. 24), do not increase or in any wise affect the Admiralty or Vice-Admiralty jurisdiction of the High Court.⁽³⁾

The High Court has no power to delegate its Admiralty jurisdiction, see 13 Geo. III, c. 63, s. 13: Charter 14, Geo. III, ss. 26, 27; 33 Geo. III, c. 52, s. 156 (extending the Admiralty jurisdiction of the Supreme

⁽¹⁾ C. 79, s. 25 (28th July 1800). No Commissioner was appointed in Bengal under that Statute.

⁽²⁾ *The Raja of Cochin*, Swaby, 473, 474; *The Australia*, 63, 480, 488; *Bardot v. The Augusta*, 10 Bom., 110.

⁽³⁾ *The Asia*, 5 Bom. O. C. J., 64; *Bardot v. The Augusta*, 10 Bom., 110. But see *The Portugal*, 6 B. L. R., 223.

Court to the high seas over all offences, misdemeanours and maritime crimes whatsoever); 53 Geo. III, c. 155, section 40 (extending the Admiralty Jurisdiction of the Supreme Court at each of the three Presidencies over all crimes committed on the high seas); 24 and 25 Vict., c. 104, s. 9, Letters Patent, 1862, clauses 31, 32; Letters Patent, 1865, clauses 32 and 33.

Since the Vice-Admiralty jurisdiction, which was formerly vested in the Chief Justice alone, became vested in the High Court, it has not been necessary to exercise the power given by Her Majesty's Commission, "of deputing and surrogating one or more deputy or deputies."

Whether the Legislative Council of India had authority to confer Admiralty jurisdiction upon any Indian Court, see 21 and 22 Vict., c. 106, s. 64 (by which existing enactments are continued); 24 and 25 Vict., c. 67, s. 23 (by which the Governor-General in Council is empowered to make laws and regulations for all persons whether British or Native, foreigners or others, and for all Courts of Justice whatsoever); 28 and 29 Vict., c. 17 s. 1, which authorizes legislation as to British subjects within the dominions of Princes and States in India in alliance with Her Majesty); 32 and 33 Vict., c. 98, s. 1 (which authorizes legislation for all persons being Indian Native subjects of Her Majesty without and beyond the Indian territories under the dominion of Her Majesty); Letters Patent, 1865, cl. 44, which makes all the provisions of the Letters Patent (including those relating to Admiralty and Vice-Admiralty jurisdiction) subject to the legislative powers of the Governor-General in Council, under 24 and 25 Vict., c. 67.

The Vice-Admiralty jurisdiction, now vested the High Court, may be exercised by any Judge appointed to sit for that purpose as a Division Court, and is practically, without any special appointment exercised by the Judge exercising Original Civil jurisdiction.

The power to appoint officers is at present vested in the Chief Justice. It has, moreover, for many years been the practice, founded on convenience, to employ the under-Sheriff for the time being, who, as such, has at his command an effective staff of officers, to perform the duties of Marshal. (1)

See the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict., Chap. 27)(2), published in the *Gazette of India* of 6th September 1890. It provides (s. 17) for the abolition of the Vice-Admiralty Courts, that [s. 2(1)] every Court declared under its provisions to be a Court of Admiralty "shall be a Court of Admiralty, with the jurisdiction in this Act mentioned;" and may (s. 2) exercise all the powers which it possesses for the purposes of its other civil jurisdiction; and it [s. 2(2)], proceeds to confer on a Colonial Court of Admiralty full Admiralty jurisdiction. It also (s. 9) provides for the continuance of the present procedure until new rules are passed. The authority to make rules is contained in s. 7, which provides that rules of procedure including fees and costs, may be made in the same manner as rules are made in the exercise of "ordinary original civil jurisdiction, but shall not, save [ss. 2(b), 13(2) and 18(a)] as provided by this Act extend to matters relating to the Slave Trade," and shall not come into operation without the approval of Her Majesty. And as to India it is [s. 16(3)], specially provided that if new rules are not sanctioned in time (when the new Act comes into force, that is, on 1st July 1891) the rules in force regulating Vice-Admiralty Courts, so far as applicable, and so far as inapplicable, the rules for the exercise of ordinary original civil jurisdiction shall have effect. (Belchambers note to cl. 32.)

It was held on a construction of the Bombay High Court Charter of 1823 that the rules and practice of the High Court of Admiralty in England prevailed and governed proceedings in the Supreme Court at Bombay in maritime causes (*Longhan v. Joosub Bhulladin*, 5 Moo. 1 App., 137).

Colonial Courts
of Admiralty
Act, 1890.

(1) See note by the late Registrar, Mr. Fink, as to the appointment of the Deputy Sheriff for the time being as Marshal, set out in Appendix U, post, p. 540.

(2) The Admiralty jurisdiction conferred on this Court by this Act is expressed to be precisely similar to that exercised by the High Court in England in Admiralty (*The Tolens* (1891) 1 L. R. 29 Cal., at p. 406).

cl. 33-34.

Enactments and rules affecting the Vice-Admiralty jurisdiction reviewed and examined (see *In matter of the Ship Fannie Skolfield*, I. L. R., 17 Cal., 337). In the matter of the *Ship Champion*, I. L. R., 17 Cal., 67, referred to where it was held that appeals from the decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction were governed by the Code of Civil Procedure and not by Rule 35 of the Vice-Admiralty regulations published under authority of 2 Will. IV, c. 51; and the usual practice as to costs was followed, see p. 84. See also the *Brenhilda*, I. L. R., 7 Cal., 547.

On an application by the impugnant for the consolidation of 3 separate salvage claims made by 3 different promovents *Held* (following English practice) that the claims should not be consolidated against the will of promovents, but heard one after the other, subject however to only one set of costs being allowed in the event of the Court finding that the application for consolidation was resisted on insufficient grounds. In matter of the *Falls of Ettrick* (1894), I. L. R., 22 Cal., 511.

Admiralty Rules have now been passed, see *post*, p. 563, *et seq.*

Criminal.

33. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such criminal jurisdiction as may now be exercised by the said *High Court* as a Court of Admiralty, or of *Vice-Admiralty*, or otherwise in connection with maritime matters or matters of prize.

The words "*High Court*," and the words "*of Vice Admiralty*" to "*of prize*," in italics, have been respectively substituted in this clause for the words "*Supreme Court*" and the words "*by such Commissary to the Vice-Admiralty Court, or by such Commissioner or Commissioners as aforesaid*," respectively, in the corresponding cl. (32) of the first Letters Patent.

See Charter of the Supreme Court, cl. 27; and the note to the last clause.

Testamentary and Intestate Jurisdiction.

Testamentary
and intestate
jurisdiction.

34. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said *High Court*, except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last wills and testaments, and letters of administration, of the goods, chattels credits, and all other effects whatsoever of persons dying intestate whether within or without the said Bengal Division, subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: provided always, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.

The words "*High Court*" to "*Letters Patent*," in italics, have been substituted in this clause for the words "*Supreme Court*, whether within or without the Bengal Division of the Presidency of Fort William," in the corresponding cl. (34) of the first Letters Patent. The other words

in italics in this clause are not in the corresponding clause of the first Letters Patent.

See note to clauses 22 and 23 of the Charter of the Supreme Court, *supra*.

Matrimonial Jurisdiction.

35. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have jurisdiction, *within the Bengal Division of the Presidency of Fort William*, in matters matrimonial between Our subjects professing the Christian religion : Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof. Matrimonial jurisdiction.

The words in italics in this clause are not in the corresponding clause (35) of the first Letters Patent. The words, "and that such jurisdiction shall extend to the local limits within which the Supreme Court now has ecclesiastical jurisdiction," in the corresponding clause of the first Letters Patent, between the words "Christian religion" and "Provided always," have been omitted from this clause.

See Indian Divorce Act, IV of 1869.

Powers of Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our reign ; *and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.* Single Judges and Division Court.

This clause, with the exception of the words in italics, is the same as cl. 36 of the first Letters Patent.

See Section 98 of the Code of Civil Procedure and note as to the effect of that section, in Woodroffe and Amir Ali's C. P. C., p. 376.

Where in a case referred under s. 307 of the Criminal Procedure Code to the High Court, the Judges differed. *Held* that that Code overrules the provisions of clause 36 of the Letters Patent and the case was directed to be laid before a Third Judge (*Queen-Empress v. Dada Ana*, I. L. R., 15 Bom., 452).

See also *Pandita v. Rahimulla Akundo* I. L. R. 26 Cal., at p. 505 and *Laldhari Singh v. Sukdeo Narain Sing* I. L. R. 26 Cal., at p. 910.

A Judge sitting on the Original Side of the Calcutta High Court under s. 14 of the Charter Act (24 & 25 Vict.), has, having regard to ss. 19, 13 and 14 of that Act and to clause 36 of Letters Patent of 1865, jurisdiction to dispose of an application under s. 6 of the Indian Copyright Act, XX of 1847, to expunge an entry from the catalogue of books kept at Bombay

cl. 38—38.

under Act XXV of 1867 (*Abdoola Bhai Sarafalli v. Ismail Bin Shaikh Badal* (1905), I. L. R., 33 Cal., 571).

Civil Procedure.

Regulation of
proceedings.

37. And We do further ordain, that it shall be lawful for the said High Court of Judicature at Fort William in Bengal from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, Testamentary, Intestate, and Matrimonial jurisdictions respectively : Provided always, that the said High Court shall be guided in making such rules and orders, as far as possible, by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council; and being Act No. VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

The corresponding clause (37) of the first Letters Patent directs by what rules the procedure is to be regulated, but does not enable the Court to make its own rules of procedure.

See also Act V of 1908, chapter X; and s. 15 of 24 and 25 Vict., c. 104, *ante*, and note to cl. 38 of the Charter, *ante*, p 47.

Criminal Procedure.

Regulation of
proceedings.

38. And We do further ordain, that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these Presents, shall be regulated by the Procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

The words "High Court" to "these Presents," and the words "which was" to "for India" and the words "laws in" to "as aforesaid," in italics, have been respectively substituted in this clause for the words "Supreme Court now has jurisdiction," and the words "now in use in the said Supreme Court," and the words "enactments of the Governor-General in Council in relation to criminal procedure as are now in force: Provided always that the regulation of such proceedings respectively shall be subject to such laws and regulations as shall be hereafter made by the Governor-General in Council in relation to such proceedings respectively," respectively, in the corresponding clause (38) of the first Letters Patent.

See the Code of Criminal Procedure, Act V of 1898.

Appeals to Privy Council.

39. And We do further ordain, that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal, made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by a majority of the full number of Judges of the said High Court, *or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these Presents.* Provided, in either case, that the sum or matter at issue is of the amount or value of *not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees* ^{Power to appeal.} ~~or~~ from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

The words "or of any" to "these Presents," and the word "of," and the word "that," in italics, have been respectively substituted in this clause for the words "as hereinbefore mentioned," and the word "above," and the words "in case," respectively, in the corresponding clause (39) of the first Letters Patent.

See 13 Geo. III, c. 63, cl. 18; clauses 30 to 33 of the Supreme Court Charter, *ante*; C. P. C., Act V of 1908, ss. 109 to 112, and O. 45.

See also for rules—Chapter 33, *post*, p. 336.

See also rules of the Judicial Committee dated 21st December 1908 printed in the Appellate Side rules, p. 22.

In the following cases it was held an appeal lay *under this clause*. From an order rejecting an application for a review of judgment (Nazur Ali Khan v. Ojoodham Khan, 1 W. R., *Mis.*, 13. But see Enayat Hossein v. Roushan Jehan, 1 B. L. R., F. B., 1).

From an order on appeal confirming sale in execution (Hurdeo Narain Sahur v. Gridhari Singh, 13 B. L. R., 103).

From a decree of a Division Bench on appeal where the Judges differed, and on the points of difference a further appeal to the High Court is given under cl. 15 (In the matter of the petition of the Court of Wards, 7 B. L. R., 730).

From a final decree of a Division Bench in a case remanded by the Privy Council for the taking of certain accounts, the Division Bench having taken the account—(Guru Progunno Lahiri v. Jotindra Mohun Lahiri (1905) 1 L. R., 32 Cal., 963).

In the following cases it was held an appeal did not lie *under this clause*.

From an order refusing the appointment of a Receiver in a suit (Chandi Dutt Jha v. Pudmanund Singh Bahadur, I. L. R., 22 Cal., 928).

From an order of the High Court rejecting an application under s. 206 of the C. P. C. of 1882 to amend a certain decree of the Court (Sunder Koer v. Chandishwar Prosad Singh (1903), I. L. R., 30 Cal., 879).

In a case where the appeal was in respect of a share in property—the value of the share being less than 10,000, the value of the whole being over that sum (Rajah Reed Nath Sahee v. Gopee Sahoo and others (1873) 19 W. R., 191).

An order passed by the High Court in the exercise of its revisional jurisdiction under s. 115, C. P. C., or its power of superintendence under s. 15 of the Charter Act, 1861, is an order made or passed on appeal within the meaning of s. 109 of the Code and clause 39 of the Letters Patent. (Secretary of State v. British India Steam Navigation Co. (1910) 15 C. W. N., p. 848, and Harish Chunder Acharja v. The Nawab of Murshidabad, same volume, p. 879. See judgments in those cases as to what is a “final order.”)

For appeals under the Civil Procedure Code, see Woodroffe & Amir Ali's Civil Procedure Code, notes to ss. 109-112.

Appeal from
interlocutory
judgments.

40. And We further ordain, that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed, respecting appeals from final judgments, decrees, orders, and sentences.

This clause is exactly the same as cl. 40 of the first Letters Patent.

Appeal in cri-
minal cases,

41. And We do further ordain, that from any judgment, order, or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case, where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors, in Council; provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

This clause is exactly the same as cl. 41 of the first Letters Patent.

Rules as to
transmission of
copies of evi-
dence and other
documents.

42. And We do further ordain, that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Fort William in Bengal to Us, Our heirs or

successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal; such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain, that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgments, decree, or decretal orders, or other order or rule of the said High Court should or might have been executed.

Execution of judgments and orders on appeal.

This clause is exactly the same as cl. 42 of the first Letters Patent.

See cl. 39 and note thereto.

Procedure to enforce orders of Her Majesty in Council.—Such applications must be to the High Court. See O. 45, rule 15, C. P. C., and notes thereto in Woodroffe and Amir Ali's C. P. C.

Calls for Records, etc., by the Government.

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

High Court to comply with requisition from Government for records, etc.

This clause is exactly the same as cl. 43 of the first Letters Patent.

44. And We do further ordain and declare, that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the Twenty-fourth and Twenty-fifth years of Our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

Powers of Indian Legislature preserved.

There is no separate clause similar to this in the first Letters Patent; but the power to alter the Indian Penal Code and to make laws relating to procedure was preserved to the Indian Legislature, the former by cl. 29, and the latter by clauses 15, 26, 27, 37, and 38 of the first Letters Patent.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor-General in Council, and shall come into operation from and after the date of such publication; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent, granted by His Majesty King George the Third, as was not revoked

Provisions of former Letters Patent inconsistent with these Letters Patent to be

or determined by the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the Twenty-eighth day of December in the Twenty-ninth year of Our Reign.

C. ROMILLY.

FOREIGN DEPARTMENT.

NOTIFICATIONS.

Simla, the 16th April, 1913.

No. 853-I. B.—In exercise of the powers conferred by the Indian High Courts Act, 1865-(28 and 29 Vict., c. 15), and in supersession of the notification of the Government of India in the Foreign Department, No. 178-J., dated the 23rd September, 1874, as subsequently amended, except in so far as it relates to Berar and to the parganas of Todgarh, Diwair, Saroth, Chang and Kot Karana in Merwara, the Governor-General in Council is pleased to direct that *original and appellate criminal jurisdiction over European British subjects of His Majesty, being Christians*, resident within the territories, save the portions aforesaid, of the States of India named below *shall*, until the Governor-General in Council otherwise orders, *be exercised* by the High Courts of Judicature *established at Fort William, Madras, Bombay and Allahabad, respectively*, as follows :—

By the High Court at Fort William in—

Nepal.		Sikkim.
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The States in the political control of the Government of Fort William in Bengal.

The States in the political control of the Government of Bihar and Orissa, excluding the portions of the Kalahandi and Patna States occupied by the Raipur-Vizianagram section of the Bengal-Nagpur Railway.

The States in the political control of the Chief Commissioner of Assam.

By the High Court at Madras in—

Mysore.	|	Banganapalle.
Pudukkottai.	|	Sandur.

The portions of the Kalahandi State occupied by the Raipur-Vizianagram section of the Bengal-Nagpur Railway.

By the High Court at Bombay in—

Baroda.		Hyderabad.
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The States in Central India other than those in the Baghelkhand and Bundelkhand Agencies.

The States in Rajputana excluding the portions of the Bharatpur State occupied by the Agra-Delhi Chord Railway and by the Cawnpore-Achnera section of the Rajputana-Malwa Railway.

The States in the political control of the Government of Bombay.

The Makrai State.

By the High Court at Allahabad in—

The States in Central India in the Baghelkhand and Bundelkhand Agencies.

BAGHELKHAND.

Baraundha.
Bhaisunda.
Jaso.
Kamta Rajaula.
Kothi.
Maihar.
Nagod.
Pahra.
Paldeo.
Rewa.
Sobawal.
Taraon.

BUNDELKHAND.

Ajaigarh.	Garrauli.
Alipura.	Gaurihar.
Banka Pahari.	Jigni.
Baoni.	Lughasi.
Beri.	Naigawan Rebai.
Bihat.	Orchha.
Bijawar.	Panna.
Bijna.	Samthar.
Charkhari.	Sarila.
Chhatarpur.	Tori Fotehpur.
Datia.	The Alampur Pargana of Indoro.
Dhurwai.	

The portions of the Bharatpur State occupied by the Agra-Delhi Chord Railway and by the Cawnpore-Achnera section of the Rajputana-Malwa Railway.

The portions of the Panna State occupied by the Raipur-Vizianagram section of the Bengal-Nagpur Railway.

The States in the political control of the Government of the United Provinces of Agra and Oudh.

The States in the political control of the Chief Commissioner of the Central Provinces other than the Makrai State.

Provided that all proceedings pending at the date of this notification shall be carried on as if this notification had not been issued.

A. H. McMAHON,

Secretary to the Government of India.

No. 854-I. B.—In exercise of the powers conferred by the Indian High Courts Act, 1865 (28 and 29 Vict., c. 15), and in supersession of so much of the notification of the Government of India in the Foreign Department, No. 178-J., dated the 3rd September, 1874, as has not been cancelled, the Governor-General in Council is pleased to direct that, until further orders, original and appellate criminal jurisdiction shall be exercised by the High Court of Judicature at Bombay over European British subjects of His Majesty, being Christians, resident in Berar, and by the High Court of Judicature at Allahabad over European British subjects of His Majesty, being Christians, resident in the parganas of Todgarh, Diwair, Saroth, Chang and Kot Karana in Merwara.

A. H. McMAHON,

Secretary to the Government of India.

THE RULES OF THE HIGH COURT, ORIGINAL SIDE.

CHAPTER I.

ADMISSION, ETC., OF ADVOCATES, ATTOR- NEYS AND ARTICLED CLERKS.

Admission of Advocates.

Ch. I.
rr. 1—2.

1. Any person may be admitted as an advocate of the High Court who is entitled to practise as a barrister in England or Ireland or as a member of the Faculty of Advocates in Scotland and intends to practise in the High Court or the Courts subordinate thereto :

Qualifications
for admission
as advocates.
[*Cf. Cal. "8."*]

Provided that he has (unless he is a member of the [New.] said Faculty) read for not less than one year in the chambers of a practising barrister in England and that he has also either—

- (a) been educated in the United Kingdom for not less than three years exclusive of the year prescribed for reading in chambers as aforesaid, or
- (b) taken a degree in a University in the United Kingdom, or
- (c) taken a degree in law in the University of Calcutta, Madras, Bombay, Allahabad or the Punjab.

Rules 1 to 4 were passed in June 1912 and published in the Gazette on 29th of that month. See note to Rule 4 as to their applicability. The chief difference between these and the old rules lies in the proviso to Rule 1.

2. No person whose application for admission as an advocate has been refused by any other Court in India shall ordinarily be admitted as an advocate of this Court.

Refused by
another
Court a bar.
[New.]

**Ch. I.
rr. 3-9.**

**Mode of
applying.**
[*Cf. Cal. 79,
80.*]

3. Every applicant for admission as an advocate of the High Court shall submit his application in the form of a letter addressed to the Registrar and accompanied by certificates showing that he is qualified under rule 1; and the Registrar shall circulate the letter, with its enclosures, to the Chief Justice and Judges.

**High Court
may relax
rules.**

[*New.*]

**Certificate
of admis-
sion.**

[*Cf. Cal. 81.*]

4. The High Court may, in any particular case, relax the foregoing rules 1 to 3 to such extent as it may think fit. (¹)

5. Every person when admitted and enrolled as an advocate of this Court, shall be entitled, the prescribed fee for admission having been paid in Court fee stamps, to obtain a certificate of admission, under the signature of the Registrar, and the seal of the Court.

The amount of stamp duty payable on entry as an Advocate is Rs. 500. (See Act II of 1890, Schedule I, Article 80 and Exemptions thereunder.)

Court fee on order for admission is Rs. 10. (See Ch. XXXVI, Rule 74 (1), *post*, p. 374.)

**Certificate of
being on the
Roll.**

[*Cal. 82.*]

6. Any advocate of this Court may, on the payment of a fee of Rs. 5 in Court fee stamps, obtain a certificate under the signature of the Registrar and the seal of the Court, that his name is borne on the Roll of Advocates of this Court.

**Custody and
inspection of
the Roll.**

[*Cf. C. 83.*]

7. The Registrar shall have the custody and care of the Roll of Advocates, and shall enrol the name of every person who shall be admitted an advocate, with the date of his admission, and shall also enter in a book to be kept for the purpose the names, in alphabetical order, of all persons who shall be admitted as advocates, with the dates of their admission, to which Roll and book all persons shall have free access without payment of any fee.

**Oath of
allegiance.**

[*C. 84.*]

8. Every advocate, before being admitted and enrolled in this Court, shall take and subscribe the oath or affirmation of allegiance.

Removal from the Roll.

**Application
to strike
name off
the Roll.**

[*New.*]

9. An advocate, who desires to have his name

(¹) **NOTE.**—Rules 1 to 4 shall be applicable only to persons who took admission into an Inn of Court on or after the 1st October 1912. To persons who took admission before that date rules 78 to 80 of the old rules shall be applicable.

struck off the Roll of Advocates, shall apply by petition verified by affidavit.

Ch. I.
rr. 9-13.
—

10. Such petition shall be entitled "in the matter of [the applicant] an advocate of this Court" and shall contain the following particulars and statements, namely :—

Contents of
petition.
[New.]

- (a) The date of admission of the applicant as an advocate of this Court.
- (b) A statement of his reasons for removal of his name from the Roll of Advocates.
- (c) That no application or other proceeding against the applicant as such advocate or as a barrister is pending in this or any other Court, or before any of the Inns of Court or other body having jurisdiction over him as such advocate or barrister and that he does not expect or apprehend that any application or proceeding will be made or taken against him as such advocate or barrister.

11. Such petition and affidavit shall ordinarily be presented to the Registrar by the applicant, but may, where the applicant is resident out of Calcutta, be sent by post, or otherwise, to the address of the Registrar.

How such
petition to
be submitted.
[New.]

12. On receipt of such petition and affidavit, the Registrar shall submit the same to the Chief Justice and, where so directed, circulate them to the Judges, and such order shall be made thereon as to the Chief Justice and Judges shall seem fit.

Procedure on
receipt of
such petition.
[New.]

13. In all cases in which the name of an advocate shall be struck off the Roll, whether on his own application or otherwise, or in which he shall be suspended from practising, a notification of the fact shall be sent, by the Registrar, to the Registrar on the Appellate Side, to the Board of Revenue, and to all Courts subordinate to the High Court.

Notification
of striking
off.
[New.]

For the proper procedure to strike off otherwise than on own application, or to suspend, see note to clause 10 of the Letters Patent, 1866, ante, p. 80.

Admission of Attorneys.Admission
of English
solicitors.[*Of. C. 85.*]
[*Of. B. 11.*]

14. Any solicitor of His Majesty's Supreme Court of Judicature in England shall be entitled to be admitted as an attorney of this Court without service or examination in India, on production of his certificate of admission in such Supreme Court and of a certificate that his name is still borne on the Rolls of such Court, and also on production of satisfactory certificates of good character, one of which shall be signed, if possible, by the Solicitor with whom he may have served as an articled clerk.

By an order of His Majesty in Council, dated the 7th August 1905 (Appendix O, *post*, p. 542), the Colonial Solicitors Act, 1900, was made applicable to Solicitors of this Court who may now, subject to the conditions contained in the order, be admitted to be Solicitors in England.

Admission
of attorney
of the
Madras or
Bombay
High Court.
[*Of. C. 86.*]

15. An attorney of the High Court of Madras, or of the High Court of Bombay, shall be entitled to be admitted as an attorney of this Court on production of a certificate of admission in either of the said Courts, and a certificate that his name is still borne on the Rolls thereof, and also on production of satisfactory certificates of good character signed, if possible, by the attorney with whom he may have served as an articled clerk and by one of the principal officers of either of the said Courts, and on satisfying the Court that, previous to his admission as an attorney, he has served under articles of clerkship to an attorney or attorneys for the full term of five years.

Admission of
Irish solicitors
after
examination
subjects of
such ex-
amination.
[*Of. C. 87.*]

16. Any solicitor of the Supreme Court of Judicature in Ireland shall be entitled to be admitted as an attorney of this Court on production of his certificate of admission in such Court, and a certificate that his name is still borne on the Rolls of such Court, and also on production of certificates of good character, one of which shall be signed, if possible, by the solicitor with whom he may have served as an articled clerk, and also on production of a certificate signed by the major part of the examiners, hereinafter mentioned, actually present at and conducting the examination (one of them being the Registrar), that he has satisfactorily passed an examination upon the following sub-

jects to be divided into four sets of papers as indicated below :—

The Charter of the High Court: the Letters Patent including any modifications thereof: the Civil Procedure Code.	} One paper.
The Indian Penal Code, and The Code of Criminal Procedure so far as it applies to Calcutta.	} One paper.
The Indian Succession Act. The Hindu Wills Act. The Probate and Administration Act.	} One paper.
The Indian Contract Act. The Evidence Act. The Registration Act. The Limitation Act.	} One paper.

17. The examination upon the above Acts shall include the amendments up to date, and rule 35 shall be applicable thereto.

Rule 35
applicable
to such ex-
amination.

[New.]

18. The examination shall be conducted by the examiners from time to time appointed for the examination of persons applying to be admitted as attorneys of this Court (hereinafter mentioned as the examiners).

Examina-
tion: by
whom con-
ducted.

[C. C. 88.]

Admission of Articled Clerks.

19. Except as hereinbefore provided, every person, before admission to practise as an attorney, shall serve a regular clerkship to an attorney of this Court, under articles of clerkship by contract in writing pursuant to the rules hereinafter contained for the full period of five years.

Five years' service under articles.

[C. 89.]

20. The term of service required by the last preceding rule need not be all under one and the same contract, nor to one and the same attorney, but may be to different attorneys, either by virtue of an assignment or assignments, or by virtue of successive independent contracts upon the dissolution of the original or succeeding contract.

Service may be to different attorneys.

[C. 89.]

See Rules 28 and 31, *post*.

The intervening period between the discharge of the original and the execution of the fresh articles will not be reckoned in the computation of service. (*Ex parte Brown*, 9 Dowl. 526; *ex parte Johnson*, 2 Jur. 966; *ex parte Wallis*, 31 L. J. Q. B. 176.) [B.]

Such
attorneys
to be prac-
tising
attorneys.
[*Of. C. 91.*]

21. An attorney under whom articles shall be served shall during the whole period of such service be actually practising as such in this Court on his own account and not merely as an assistant to any other attorney or firm of attorneys.

See note to next rule.

One articled
clerk allowed
at a time
after seven
years' prac-
tice.

[*Of. C. 92.*]

~~22. No attorney shall be entitled to take more than one clerk for service under these rules at one and the same time, nor any clerk until he shall have been himself in practice as an attorney on his own account and not merely as an assistant to any other attorney or firm of attorneys, for at least seven years.~~

The words "on his own account and not merely as an assistant to any other attorney or firm of attorneys" in this and the previous rule are new.

The wording of the old Rule 92, "until he shall have been himself in practice as an attorney," were construed differently by different Judges. The intention of the present rules is that, to entitle an attorney to take a clerk under Rule 22, or to entitle the service to count under Rule 21, the attorney must come within the last words of the rules. Where an attorney, though an assistant to another attorney or firm of attorneys, has at the same time, as is often the case out here, clients of his own he would come within the words "practising on his own account and not merely as an assistant."

Fraud, etc.,
a bar to be-
coming
articled.

[*Of. B. 23.*]

23. Any person who has been guilty of any fraud, dishonesty or other disgraceful conduct, or who is of doubtful reputation, or who is an undischarged insolvent, shall not be accepted by any attorney as an articled clerk.

Who may be-
come articled
clerks.

[*Of. C. 93 &
B. 19.*]

24. No person (other than those in the next rule mentioned) not being a graduate of one of the Universities following, *viz.*:—the Universities of Great Britain or Ireland, the Universities of Calcutta, Bombay, Madras, Allahabad or of the Punjab, shall become an articled clerk to any attorney of this Court with a view to being admitted as an attorney.

Graduate.—Our old Rule 93 was limited to those who had passed the B.A. examination of the University of Calcutta or Allahabad.

Who may,
by special
order, be-
come articled
clerks.

[*Of. C. 93.*]

25. Persons who are not such graduates as mentioned in the preceding rule, but who shall have passed in England one of the examinations which in England exempt a person from the preliminary examination, or who shall appear to the Chief Justice and Judges to have been educated up to a sufficient standard, or any person who may have been articled to a solicitor of His Majesty's Supreme Court of Judicature in

England or Ireland may, by special order, be permitted to enter into articles of clerkship.

For a list of the Examinations which at present exempt in England from the preliminary examination see Handbook of the Law Society (1906), p. 233.

Passed in England.—The passing of, *e.g.*, the Senior Local Cambridge in this country will not be sufficient.

Sufficient standard.—Persons educated in England were allowed to be articleed on being examined by a Professor of the Presidency College who was for that purpose nominated by the Director of Public Instruction and approved by the Court. (In *re Watkins*, February 3rd, 1878; In *re Piffard*, August 26th, 1878.)

A person educated in England was allowed to enter into articles on satisfying the Judges that he had been educated up to a sufficient standard without producing a local certificate. (In *re Scott*, March 3rd, 1879.)

In the case of a person educated in England who produced a certificate of having passed the Oxford Local Examination as a junior candidate, 3rd division, a certificate from the College of Preceptors of having passed an examination for the higher commercial class, 2nd division, and a certificate from the Principal of the General Assembly's College of having continued his studies in that College, it was considered that the standard of education attained by him was sufficient. (In *re Hannah*, February 28th, 1881.)

In the case of a person who was sent to England in 1868 when he was between 4 and 5 years of age and attended a school in England for three years, who then was brought back to India and continued here till 1878 when he was again sent to England and remained there for 4 years, attending the Western College, Brighton, and who applied for leave to be articleed under the proviso to this rule, White, J., expressed the following opinion: "The proviso in Rule 9 was intended to meet the case of a person who is entirely educated in Europe, and not the case of one who is sent from this country to England for a few years and goes to school whilst there." The majority of the Judges adopted this opinion, the dissentient Judges being Markby, J., Pontifex, Mitter, J., and Broughton, J. (In *re Beeby*, July 1st, 1878.)

A man who was "partially educated in England" where he studied for the Indian Civil Service, and who, on his return to India, filled the position of Professor of English and Political Economy in the Metropolitan Institution, and subsequently served as Sub-Editor of the *Indian Daily News*, and afterwards as Assistant Editor of the *Civil and Military Gazette*, was permitted to enter into articles of clerkship. (In *re Bannerjee*, Resolution No. 1874, August 8th, 1888.) [B.]

In the case of a person educated in England, who produced a certificate of having passed the Oxford Local Examination as a senior candidate, and a certificate of having been nominated an associate of the Engineering College at Cooper's Hill after having passed the final examination, as the result of which he was placed in the first class in Mathematics, it was deemed that he had been educated up to a sufficient standard, and he was permitted to enter into articles. (In *re Gregory*, April 2nd, 1891.)

See also In *re Arnowitz*, September 1906.

26. Application to enter into articles of clerkship. Procedure under the last preceding rule shall be made by petition to object to such special order. stating the facts and referring to any documents upon which the petitioner relies, and in the case of the petition of a person mentioned in the last portion of rule 25 [O. C. 108.]

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rr. 26-28.

annexing his original articles entered into in England or Ireland or an authenticated copy thereof, and also stating the circumstances under which the service under such last-mentioned articles was terminated. Such petition and documents shall be left with the Registrar, who shall submit the same to the Chief Justice and Judges.

Filing of
contract, etc.
[Cf. C. 94.]

27. The contract in writing whereby a person shall engage as aforesaid to serve as a clerk to any attorney, shall be filed with the Registrar within one calendar month after the execution of the same, together with an affidavit by such attorney that he has been himself duly admitted and has been practising on his own account, and not merely as an assistant to any other attorney or firm of attorneys, for seven years as an attorney, and that such contract has been duly executed by himself and by the clerk therein mentioned. And in every such affidavit shall be specified the name of the attorney and his place of business, the name of the clerk and his place of abode, together with the day on which the contract was actually executed. An affidavit shall also be filed by the clerk showing that he is qualified under these rules.

This is the old rule with the wording altered to meet the alteration in Rules 21 and 22, *ante*.

Where the articles are lost or destroyed a copy may be enrolled. (See Cordery, 3rd Edition, p. 10.)

The stamp duty in respect of articles of clerkship is Rs. 250. (Act II of 1899, Schedule I, Article 11.) The Court fee on order for admission is Rs. 10. (See Chapter XXXVI, Rule 74 (1), *post*, p. 374.)

Assignment
of articles.
[Cf. C. 95
and B. 15.]

28. In case the articles of clerkship shall be assigned, the assignment shall be in writing and shall in like manner as aforesaid be filed within one calendar month after the execution thereof together with an affidavit by the attorney to whom the assignment has been made that he has been duly admitted and has been practising on his own account, and not merely as an assistant to any other attorney or firm of attorneys, for seven years, and that such assignment has been executed by all the necessary parties. And in every such affidavit shall be specified the name of the attorney to whom the articles are assigned and his place of business together with the date on which the assignment was actually executed.

Articles, the covenants of which have been released, cannot be assigned. (Soobramandyan, 2 I. Jur. O. S., p. 15.)

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rr. 29—31.

Fresh articles in case of death, etc.
[Cf. C. 96 and B. 16.]

29. Where by reason of death, or for any other good and sufficient reason, an assignment of the articles cannot be obtained, a fresh contract in writing for the remaining period of his term of service shall be entered into by the clerk with the attorney under whom the service is to be continued, which shall be filed within the time, and with an affidavit by the attorney similar to that prescribed by rule 27.

Cf. Solicitors Act, 1843, s. 13: "Where the Master dismisses the clerk without sufficient cause or neglects to touch him, and refuses to cancel the articles by mutual consent, the clerk's proper course would seem to be to apply to be legally discharged, so as to bring himself within s. 13, the Court, it is conceived, having inherent power to direct the articles to be legally discharged in any proper case." (See Cordery, 3rd Edition, p. 15 and cases there cited.)

30. In case the contract or assignment, together with the necessary affidavit, be not filed within the time specified, the same may be filed after the expiration thereof, but the service of the clerk shall be reckoned to have been commenced or renewed from the date of the filing of such contract or assignment, unless the Court shall otherwise order.

Articles or assignment may be filed after specified time: consequence of such filing.
[C. 97.]

For cases under similar rule in England see Cordery, 3rd Edition, p. 8.

31. No person who shall be articted to serve as a clerk to an attorney for the purpose of being admitted as an attorney shall, during the period of such service, hold any office or engage in any employment whatsoever other than the employment of clerk to such attorney and his partner or partners (if any) in the business, practice, or employment of an attorney, and every such person shall, during the whole period of service under articles, continue and be really and actually employed in the proper business, practice, or employment of an attorney.

Articted clerks not to hold other office or employment during period of service.
[C. 98.]

This rule is founded on s. 10 of the Solicitors Act, 1860, under which it was held that where an articted clerk held the office of vestry clerk, though his duties had not interfered with his due service under the articles, or legal studies, he had contravened the section. (In re Greville, L. R. 9 C. P. 18.)

An application by a clerk, who had served all but 4 months and 20 days of his articles, for leave to accept the post of Secretary to a Syndicate in which his family were interested during the unexpired portion of his term, was refused. (In re Sarojendra Kumar Dutt, May 1913.)

The provisions of s. 4 of the Solicitors Act, 1874, under which a clerk may, with the consent in writing of the Master, obtain the Court's sanction to taking other employment have not been embodied in our rules.

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 rr. 32-34.

Two ex-
 aminations :
 time for
 admission to
 same.

[C. 99.]

32. Every articled clerk shall, after he has been articled and before admission, pass two examinations, one after he has served half the term of his articles, and the other (except as provided in rule 46) after he has served the full term of his articles : provided that he shall not be admitted to the second examination until the expiration of six months after he shall have passed the first examination, unless the Court shall otherwise order.

Intermediate
 Examination:
 subjects
 for same.

[Cf. C. 100.]

33. The first of these examinations (hereinafter called the Intermediate Examination) shall be in the following subjects :—

	Paper.
The Charter of the High Court: the Letters Patent including any modifications thereof:	
the Civil Procedure Code	1
The Rules of the High Court, Original Side	1
Principles of Common Law and Equity	1
Principles of the Law and Procedure in the High Court as to Guardians and Wards, Arbitration and Lunacy	1
The Limitation, Stamp and Registration Acts	1

NOTE.—The first and second Intermediate Examinations to be held after the passing of these rules will be as laid down in the old rules.

Final Ex-
 amination :
 subjects
 for same.

[Cf. C. 102.]

34. The second of the said examinations (hereinafter called the Final Examination) shall be in the following subjects :—

	Paper.
Principles of the law relating to moveable and immoveable property in India including the Indian Contract Act and the Transfer of Property Act: and the Practice of Conveyancing	1
The Evidence Act: The Law as to Attorneys	1
Principles of the Law and Procedure in the Testamentary and Intestate, Matrimonial, and Admiralty Jurisdictions of the High Court	1
The Hindu and Mahomedan Law	1
The Code of Criminal Procedure so far as it applies to Calcutta: The Indian Penal Code	1
The Indian Companies Act; The Presidency Towns Insolvency Act and the respective rules thereunder	1

NOTE.—Articled clerks who have passed the Intermediate Examination under the old rules will be examined for their Final Examination also under the old rules.

35. The number of questions in each paper in each examination shall be ten, and the aggregate number of marks in each paper shall be 200. To be entitled to pass, a candidate must obtain 125 marks in each paper.

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Number of questions, full marks and pass marks in each examination.

[C]. C. 101 and 103.]

36. Before any articulated clerk shall be admitted to the Final Examination, he shall sign and leave with the Registrar answers to the questions contained in Form No. 1, and shall also produce his diploma or other satisfactory evidence of his being a graduate of one of the Universities mentioned in rule 24, or a certificate of his having passed one of the examinations mentioned in rule 25, or obtained an order under the latter rule, and a certificate of the examiners of his having passed the Intermediate Examination, and an affidavit by himself, stating that he has actually and really served and been employed by the attorney or attorneys to whom he has been bound during the whole term and in the manner required by these rules; that he has not held any office or engaged in any employment contrary to these rules; that he has attained the age of 21 years; and that he is not an undischarged insolvent. And the attorney or attorneys with whom he shall have served his clerkship shall sign and leave with the Registrar answers to the questions contained in Form No. 2, as also a certificate in the form therein given.

Proof of due service, etc., before admission to the Final.
[C]. C. 104.]

37. The applicant shall, at the same time, produce satisfactory testimonials to his good character.

Testimonials to character.
[C. 106.]

38. Every person so applying to be admitted to the Final Examination shall also, if required, sign and leave or cause to be left with the Registrar answers in writing to such other written or printed questions as shall be proposed by the examiners touching his service and conduct, and also, if required, attend the examiners personally for the purpose of giving further explanation touching the same and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid, to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the examiners of his inability to procure the same.

Further proof of service, etc., if required.
[C. 106.]

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rr. 39—47.

Candidates
to attend
and answer
questions at
the appointed
place and
time.

[C. 107.]

39. Every person so applying shall also attend the examiners at such place or places, and at such time or times, as shall be appointed for that purpose, and shall answer such questions as the examiners shall then and there put to him by written or printed papers touching his fitness and capacity to act as an attorney.

Examiners
may dis-
pense with
conditions
in rule 36.

[C. 109.]

40. In case the applicant shall show sufficient cause to the satisfaction of the examiners why the requirements of rule 36 cannot be fully complied with, it shall be in the power of the examiners, upon other sufficient proof being given of the qualification of the candidate under these rules, to dispense with any part of such requirements as they may think fit and reasonable.

Registrar
ex officio
examiner.

[Cf. C. 110.]

Number of
examiners :
their
appointment.

[Cf. C. 110].

41. The Registrar for the time being shall be *ex officio* an examiner.

42. In addition to the Registrar there shall be not less than four examiners who shall be appointed by the Chief Justice and shall be either advocates or attorneys of the Court.

Examiner's
term of
office.

[New.]

43. The term of office of each non-official examiner shall be two years from the time of his appointment, provided that any examiner may be re-appointed.

Quorum.

[C. 110 (end).]

44. Any four of the examiners, one being the Registrar, shall be competent to conduct the examinations.

Examination
every six
months.

[C. 111.]

45. The examinations shall be held once in every six months at such time and place as the examiners shall appoint.

Final
Examination
before
service of
full term :
admission
as attorney
in such cases.

[C. 112.]

46. Any clerk shall be at liberty to attend the Final Examination next preceding the expiration of his term of service, but he shall not be admitted as an attorney until after his term of service shall have expired nor shall the certificate mentioned in rule 52 be issued without proof to the satisfaction of the examiners that the clerk has duly served the remaining period of the term of service.

Notices to
appear at
examinations
to be

47. The Registrar shall reduce all notices of intention to appear at any examination into an alphabetical table under convenient heads, and shall,

three weeks previous to the examination, affix the same on the notice board at the east gate and also on the Registrar's notice board to be exhibited daily, and shall send a copy of the same to the Secretary to the Incorporated Law Society of Calcutta.

(Ch. I.
rr. 47—52.)
tabulated
and the
same to be
notified.
[C. 113.]

48. The Registrar shall inform each candidate, who shall have given notice of his intention to appear at any of the examinations, of the days fixed for each examination.

Candidates
to be in-
formed of
the days of
examination.
[C. 114.]

49. Any candidate bringing into an examination room any book, document, or printed or written paper whatsoever or communicating in any way with another candidate or copying from another candidate in the examination room or using any unfair means whatsoever, or assisting another candidate in so doing, will be liable to be summarily ejected from the examination room, and shall not, unless the Court shall otherwise order, be permitted to appear at any other portion of the same examination or at any subsequent examination.

(Consequences
of miscon-
duct,
etc., at any
examination.
[New.]

50. Every person (except a solicitor of His Majesty's Supreme Court of Judicature in England) intending to apply for admission as an attorney of this Court shall give one month's notice in writing to the Registrar, stating his intention. Such notice may be included in the notice for Final Examination.

One month's
notice for
admission
as attorney.
[C. 115.]

The Court will assist where omission to give notice arises from excusable circumstances (In re Taylor, 44 L. J. C. P. 66), but not where it was intentional. (In re Cumberland, L. R. 10 Q. B. 138.)

51. Every person liable to pass the Intermediate and the Final Examinations before being admitted as an attorney shall obtain a certificate signed by the major part of the examiners actually present at and conducting the Final Examination (one of them being the Registrar) that he has satisfactorily passed the same.

Certificate
of passing
examina-
tions.
[C. 116.]

As to Court's power to interfere with the discretion of the Examiners—or dispense with the certificates required by the Rules—see In re Purna Chunder Dutt, 12 C. W. N., p. 873, I. L. R. 35 Cal. 915; and note to clause 10 of the Letters Patent, 1865, ante, p. 80.

52. Every such person shall likewise, before admission, produce a certificate signed by the major part of the examiners (one of them being the Registrar)

Examiners'
certificate
as to service
and fitness

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rr. 52-54.

for admission.

[C. 117.]

Procedure where certificate under rule 52 is refused.

[C. 118.]

Persons below 21 years not to be admitted as attorneys.

[Cf. C. 119.]

Undischarged insolvents not to be admitted.

[Cf. C. 120.]

Mode of application for admission as attorney.

[Cf. C. 121.]

Procedure after such application is made.

[Cf. C. 122.]

Oath before enrolment as attorney.

[C. 123.]

that he has satisfied the examiners that he has really and actually served under his articles in accordance with the foregoing rules, and that he is a fit and proper person to be admitted as an attorney.

53. In case any person shall be dissatisfied with the refusal of the examiners to grant him the certificate mentioned in rule 52, he shall be at liberty, within one month, to apply for admission by petition in writing to the Chief Justice, which application shall be heard by any bench the Chief Justice shall appoint for that purpose.

54. No person, except an attorney or solicitor of His Majesty's Supreme Court of Judicature in England or Ireland, shall be admitted to practise as an attorney of this Court without proof that he has attained the age of 21 years.

55. No undischarged insolvent shall be admitted to either of the examinations prescribed by these rules, nor shall be admitted as an attorney of this Court.

56. The mode of applying to be admitted an attorney shall be by petition. Such petition shall be left with the Registrar, together with—

- (1) in the case of a person applying under rule 14, the certificates required by that rule; or
- (2) in the case of a person applying under rule 15, the certificates required by that rule and proof of service under articles for five years; or
- (3) in the case of an articulated clerk, the certificates of the examiners to be issued under rules 51 and 52.

57. The Registrar shall submit the petition to be admitted an attorney, with the other documents to be left with him, to the Judge, or Senior Judge, for the time being exercising Ordinary Original Civil Jurisdiction, for his *fiat*.

58. Every person applying to be admitted an attorney of this Court shall, before being admitted and enrolled, take and subscribe the oath or affirmation of allegiance and also the following oath or affirmation:—

“ I A. B. do swear (or solemnly affirm) that I will truly and honourably demean myself in the practice of an attorney according to the best of my knowledge and ability.”

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rr. 59—64.

59. Every person when admitted and enrolled as an attorney of this Court shall be entitled, the prescribed fee for admission having been paid in Court fee stamps, to obtain a certificate of admission under the signature of the Registrar and the seal of the Court.

Certificate
of admission.
[C. C. 124.]

60. Every person intending to appear at any of the examinations prescribed by these rules shall, before each half-yearly examination, give one calendar month's notice in writing to the Registrar, stating his intention, and shall at the same time, and on each occasion of giving notice of examination, pay to the Registrar a fee of Rs. 50, where the notice is for an Intermediate Examination, or a fee of Rs. 100, where the notice is for a Final Examination, or an examination under rule 16, and the fees so paid shall be placed to the credit of a fund to be called the "Examination Fee Fund."

A month's
notice to
appear at
any ex-
amination :
fee for each
examination.
[C. C. 125.]

61. Every person who shall have given notice of his intention to appear at either examination, or to apply for admission as an attorney, and who shall not have attended to be examined, or not have passed the examination, or not have been admitted may renew the notice for examination or admission, from time to time, as often as he shall think proper : provided that every renewed notice shall be given in conformity with rules 50 and 60, unless the Court shall otherwise order.

Renewal of
notice for
examination
or admission
as attorney.
[C. C. 126.]

62. All expenses that may be incurred on account of the examinations to be conducted under these rules shall be defrayed by the Registrar out of the Examination Fee Fund, and the balance of the fees realised on each examination shall be divided between the examiners who shall conduct such examination : provided that no larger sum shall be received by any examiner on account of any one examination than Rs. 300.

*for expenses rule 62,
see 110th. 4
4. 12. 41
in 203 of
Judice, 4
15. 12. 41
p. 2, h. 31*
Expenses of
examination
to be
defrayed
out of Fee
Fund :
division of
balance
between the
examiners.
[C. 127.]

63. The Registrar shall keep an account of all such fees as shall be paid to him under rule 60, and shall at the end of each year file a statement of account signed by himself and two other examiners.

Account of
fees : filing
of such
account.
[C. 128.]

64. An attorney of this Court may, on the payment of a fee of Rs. 5 in Court fee stamps, obtain a certificate, under the signature of the Registrar and the seal of the Court, that his name is borne on the Roll of

Certificate
of being
on the
Roll.
[C. 129.]

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R. 64—70.**

Attorneys of this Court, and, if such be the case, that he is a practising attorney of this Court.

All documents to be filed with the Registrar: custody and inspection of the Roll.

[C. 130.]

65. The Registrar shall be the proper officer for receiving and filing all such affidavits and documents as are required to be produced and filed under these rules, and shall have the custody and care of the Roll of Attorneys, and shall enrol the name of every person who shall be admitted an attorney with the date of his admission, and shall also enter in a book to be kept for the purpose the names in alphabetical order of all persons who shall be admitted as attorneys with the dates of their admission, to which Roll and book all persons shall have free access without payment of any fee.

Form of notice of examination.

[C. 131.]

Who to hear applications and exercise powers under these rules.

[C. 132.]

Appeals from orders under the last rule.

[C. 133.]

66. Notice of examination shall be in Form No. 3.

67. The Judge, or Senior Judge, for the time being exercising Ordinary Original Civil Jurisdiction shall hear all applications, the hearing of which is not otherwise provided for, and shall exercise all the powers of the Court under these rules, unless the Chief Justice shall otherwise specially direct.

68. A petition in writing appealing from any order made under the last preceding rule may be presented to the Chief Justice within one month from the date of such order. Such appeal shall be heard by any bench the Chief Justice shall appoint for that purpose.

Removal from the Roll.

Application to strike name off the Roll, how to be made.

[New.]

Contents of petition to strike off name.

[New.]

69. An attorney, who wishes to have his name struck off the Roll of Attorneys, shall apply by petition, verified by affidavit.

70. Such petition shall be entitled "In the matter of [the applicant] an attorney of this Court," and shall contain the following particulars and statements, namely:—

(a) The date of the admission of the applicant as an attorney of this Court.

(b) A statement of the reason why he wishes his

name to be removed from the Roll of Attorneys.

(c) That no application or other proceeding is pending in this or any other Court against the applicant as an attorney, and that he does not expect or apprehend that any application or proceeding will be made against him as such attorney.

(d) That no fees are owing to the Court for which he is personally responsible.

71. Such petition and affidavit shall ordinarily be presented to the Registrar by the applicant, but where the applicant is resident out of Calcutta, they may be sent by post or otherwise to the address of the Registrar.

How such petition is to be submitted.
[New.]

72. On receipt by the Registrar of such petition and affidavit, he shall submit the same to the Chief Justice, and circulate the same to the Judges and such order shall be made thereon as to the Chief Justice and Judges shall seem fit.

Procedure on receipt of such petition.
[New.]

73. In all cases in which an attorney, who has been admitted as a vakeel of the High Court, shall be struck off the Roll of Attorneys for misconduct, his name shall also be struck off the Roll of Vakeels: and in all cases in which he has been suspended from acting as an attorney for misconduct he shall be also suspended from acting as a vakeel, and *vice versa*.

Effect of striking name off the Roll: and of suspension as attorney.
[C. C. 76.]

For proper procedure to strike off otherwise than on own application, or to suspend, see note to clause 10 of the Letters Patent, 1865, *ante*, p. 80.

The practice which prevails in England of not publishing the name of the attorney, against whom a Rule has been obtained, until the charges have been proved, has been approved of and followed in this Court. (In the matter of An Attorney (1896), L. L. R. 23 Cal. 576.)

74. In all cases in which the name of an attorney shall be struck off the Roll, or in which he shall be suspended from acting as such, for misconduct, a notification of the fact shall be sent by the Registrar as provided in rule 13.

Notifications of striking off.
[C. C. 77.]

75. The forms to which reference is made in this chapter are those in Appendix A.⁽¹⁾

Forms in Appendix.
[New.]

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r. 1-4.

CHAPTER II.

PROCEDURE AND PRACTICE AS TO ADVOCATES, ATTORNEYS AND VAKEELS.

Advocates
how to
appear and
plead.
[Cf. C. 70.]

1. Advocates of this Court may appear and plead for parties on either side of the Court, but on the Original Side or in appeals from the Original Side, not unless instructed by an attorney.

It was held that counsel appearing on a reference from the S. C. Ct. should receive instructions from an attorney and not from a pleader of the S. C. Ct. (*Moran & Co. v. Dewan Ali Seran. Couch, C. J., and Markby, J., 7th February 1872.*)

As to the rights, privileges, exemptions, etc., of Advocates, see Belchambers' Practice, p. 6 *et seq.*

The Advocate General and Officiating Advocate General for the time being are entitled to similar preaudience as the Attorney General in England. (*Bourke, O. C. 224.*)

Precedence
of advo-
cates.
[New.]

2. Advocates shall have precedence in all Courts in the Bengal Division of the Presidency of Fort William in which they are entitled by law to plead, and in all applications, and in the conduct of cases shall be entitled to appear and plead according to precedence at the Bar.

Warrants
not required
from advo-
cates.
[New.]

3. No advocate shall be required to present any document empowering him to appear and plead in any appeal or proceeding, Civil or Criminal.

Vakeel not
to appear,
plead or act
on the
Original
Side.
[Cf. C. 71.]

4. Vakeels shall not appear, plead, or act for any suitor in this Court in any matter on the Original Side or in any matter of appeal from any case from the Original Side unless in such appeal a question of Hindu or Mahomedan law or usage shall arise, and the Court or a Judge thereof shall think fit to admit a vakeel or vakeels to plead for any suitor or suitors in that case. In such case the vakeel or vakeels so admitted may plead accordingly:

[C. 72.]

Provided also that a vakeel shall be at liberty to appear, act and plead in any case removed under the provisions of section 13 of the Letters Patent.

See *Sarat Chunder Singh v. Brojo Lal Mukerjee*, L. R. 80 Cal., p. 986, and *In re Barristers and Vakeels*, 18 C. W. N. 95. As pointed out in the first mentioned case the privilege given by the proviso, which is old Rule 72, has never been availed of. See also *In re A Vakil's applica- tion*, I. L. R. 37 Cal. 853.

5. Any attorney admitted and enrolled as a vakeel shall, in his character of vakeel, be bound by rule 4, and be entitled to the privilege granted to vakeels.

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r. 5-6.
—
Attorney
enrolled as
vakeel.

6. Attorneys admitted as vakeels shall not thereby be deprived of their powers to act as Attorneys-at-Law.

[Cf. C. 73.]

Powers as
attorney
continued.

[C. 74.]

7. No attorney of this Court shall permit any person whatsoever, except another attorney of the same, to practise, or do any act whatsoever, in this Court in his name.

Only an
attorney
can act for
another
attorney.

[C. 135.]

8. No suitor of this Court, having an attorney or firm of attorneys on the record, shall be at liberty to file a warrant of attorney in favour of another attorney or firm of attorneys to act for him in any suit, appeal or matter, except with the consent of the former attorney or firm of attorneys, without the leave of the Court, or of a Judge first had and obtained: provided that where the attorney on record carrying on business alone either in his own name or in that of a firm dies or becomes incapacitated under any rule of this Court from acting, a fresh warrant may be filed without leave.

Change of
attorney:
filing of
fresh
warrant.

[New.]

[Cf. C. 136.]

This rule considerably alters old Rule 136 which dealt only with a change of attorney, but made no provision for other cases which constantly crop up, e.g., an attorney dying—dissolution of a firm of attorneys by death of a partner or otherwise. It is now provided that, except in the cases mentioned in the proviso, a fresh warrant cannot be filed, except by consent, without leave of the Court or a Judge.

As to **discharge of a warrant** see O. III. r. 4 of the Code and *Atul Chunder Ghose v. Lakshman Chunder Sen* (1909), I. L. R. 36 Cal. 609, where it was held that an attorney's retainer cannot be revoked by the client by a mere letter.

Duration of Retainer.—The general rule is that a retainer to conduct an action continues till the client discharges the solicitor, or the solicitor discharges himself, or till death or incapacity of either party, or a change in the solicitor's firm, or till the final conclusion of the cause or matter. (*Underwood v. Lewis*, (1894), 2 Q. B. 306 C. A.; cf. *Re Wingfield*, (1904), 2 Ch. 665, 678, 684, C. A.; *R. v. Leirim, J.J.*, (1900), 2 I. R. 397.)

As to what is the final conclusion of the cause or matter, and as to a solicitor's authority after judgment generally, see *Harris v. Quine*, (1869), L. R. 4 Q. B. 653; and *Lady de la Pole v. Dick* (1885), 29 Ch. D. 351, and cases there cited.

A warrant of attorney, unless specially restricted in form, empowers the attorney to act both in the original and appellate jurisdiction. (*Cassim Mamoojee v. Bopal Lal Seal* (1899), 3 C. W. N. 579; and after judgment see *Atul Chunder Ghosh v. Lakshman Chunder, supra.*) In the former case it was held that an application to prosecute under section 195, Criminal

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rr. 8-11.

Procedure Code, was not in connection with the suit, within the words of the original warrant to defend, and the defendant was entitled to appear through another attorney.

In England a party changing his solicitor is not bound to pay the solicitor's costs before the change. (*Grant v. Holland* (1870), 3 C. P. D. 180.)

The effect of the change on the solicitor's lien depends on whether the solicitor discharges himself or is discharged by the client. (See *Re Rapid Road Transit Co.* (1909), Ch. 96, where the subject is fully discussed and cases cited by Neville, J.) If the solicitor discharges himself, as for instance by refusing to proceed absolutely or unless funds are provided, he may be ordered to hand over the papers to a new solicitor on the latter undertaking to hold them without prejudice to his lien, and to return them intact after the action is over, and to allow the former solicitor access to them in the meantime. (*Robins v. Goldingham* (1872), L. R. 13 Eg., p. 440, followed in this Court—see *Basanto Kumar Mitter v. Kusum Kumar Mitter* (1900), 4 C. W. N. 767; *Atul Chandra Mukerjee v. Soshee Bhusan Mukerjee* (1901), 6 C. W. N. 215; and *Maheshpur Coal Co. v. Jatindra Nath Gupta* (1912), I. L. R. 40 Cal. 386.) On the other hand, if the solicitor is discharged by the client he cannot, except for some special purpose, so long as his costs remain unpaid, be compelled to produce or hand over the papers. (*Re Faithfull* (1868), L. R. 6 Eg. 325, and other cases cited on p. 41, *Yearly Practice for 1912*.)

Our practice, however, has differed from that in England, in that it has been the rule, in this Court, to decline to sanction a change of attorney *where the former attorney has not discharged himself*, so long as his costs remain unpaid. (*Basanto Kumar Mitter v. Kusum Kumar Mitter and Maheshpur Coal Co. v. Jatindra Nath Gupta, supra.*)

An Executor desiring to change an attorney employed by the testator and continued by the Executor must, on a change, pay not only the costs incurred since the signing of the Warrant by the Executor, but past costs incurred by the testator. (*Girindra Coomar Dutt v. Amullya Ch. Dutt* (1902), 6 C. W. N., p. 307.)

A next friend of an infant is entitled to a change of attorney on the same terms as any other litigant. (*Dinendra Nath Dutt v. T. H. Wilson & Co.* (1901), 5 C. W. N., p. 484.)

Warrant of attorney from the Government Solicitor.—See note to clause 16 of the Charter of 1774, *ante*, p. 30.

9. No attorney shall be at liberty to withdraw from the conduct of any suit, appeal, or matter, on the ground of non-payment of costs by his client, without the leave of the Court or a Judge to be first had and obtained.

Attorney
not to
withdraw
from the
conduct of
suit, etc.
[*Cf. C. 779*
(*end.*)]

10. Wherever a suitor changes his attorney the new attorney shall give notice of the change to the other parties appearing.

Notice of
change of
attorney.
[*New.*]

11. Except by a special order of the Court, no warrant of attorney shall be filed unless it be signed by each person by whom it purports to be given: nor where there is any mark instead of signature, unless, together with the warrant, there be filed an affidavit of

Warrant of
attorney :
[*Cf. C. 140.*]
if mark
instead of
signature :

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signed by
procuration :

signed as
in O. III,
r. 2 (b) of
the Code :
proviso as
to partners.

the due execution thereof; nor where there is any signature by procuration, unless there be either some sufficient written authority or duly attested copy thereof, filed at the same time as the warrant, together with an affidavit of the due execution of the original, or at least of the handwriting of the party who signed the same : or in case the warrant be signed by any person within the meaning of O. 3, r. 2, clause (b) of the Code, unless there be an affidavit filed by the person who signs the warrant, explaining the nature of the authority under which he acts : provided always that nothing herein contained shall prevent any one partner of any mercantile firm, or partnership in trade, from signing any warrant of attorney on behalf of himself and partners, when he would otherwise have been lawfully entitled so to do.

12. In any business which, under the rules, practice or procedure of the Court, is heard in Court, no party shall be heard by his attorney where an advocate of this Court can be procured, but where no such advocate can be procured, his attorney may be heard on his behalf, and may do all and every act required to be done by an advocate.

Attorney may
be heard in
Court.
[Cf. C. 142.]

By the Letters Patent, cl. 10 and O. I, r. 12, C. P. C., a suitor is allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor. This Court has always given effect to s. 19 of Act VIII of 1850 (corresponding with O. XXVIII, r. 1, C. P. C.) by which military men who cannot obtain leave are enabled to sue or defend through any person. With these exceptions, no suitor can appear before this Court on its Original Side except through an attorney of the Court.

In consequence of the absence of counsel, an attorney was required to conduct a case in Court under the corresponding old rule. (*Bengal Coal Company v. Heeralall Seal*, Court Minute-book, 23rd September 1864.)

See note to clause 9 of Letters Patent of 1865, *ante*, p. 80.

By clause 9 of those Letters Patent, the Court may by "its rules and directions" determine whether advocates, vakeels, and attorneys shall appear, plead or act, or plead and act.

It is noticeable that by s. 2 of the Code (the interpretation clause), an advocate, a vakeel, and an attorney of a High Court have an equal right to appear and plead; but this section, the practical effect of which, if taken by itself, would be to abolish the distinction between these three classes of practitioners, must be read in connection with s. 119 which (as s. 685 of the old Code) was added at a late stage of the Bill, in consequence of a memorial presented by the Attorneys' Association by which the power of the Court to make rules concerning advocates, vakeels and attorneys is expressly reserved.

In chambers attorneys have the right of preaudience before counsel. (See Chapter VI, Rule 17, *post*.) [B.]

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By whom
party may
be heard in
Chambers.

[New.]

When party
may be
heard in
person.

[New.]

Procedure
when
attorney
or party
heard in
Court.

[New.]

13. In any business which, under the rules, practice or procedure of the Court, is heard before a Judge or an officer, a party may be heard by attorney.

14. No party, having an attorney on the record, shall be heard in person except with the special leave of the Court, Judge or officer before whom the business is proceeding.

15. The attorney or party who is heard in Court shall in all things conform to the rules laid down for the conduct of advocates.

CHAPTER III.

**HOLDINGS OF COURTS, VACATIONS,
HOLIDAYS.**

1. A Court for the exercise of the Original Jurisdiction of the High Court on its several sides may be held before one or more Judges of the High Court. Holdings of
Courts on
Original
Side.
[B. 1.]

2. The vacations to be observed in the several Courts and offices of the High Court on its Original Side shall be three in every year, viz., the Easter, the Long and the Christmas vacations, and shall begin and end on such days as the Chief Justice may direct. Vacations.
[C/. B. 2.]

The Easter vacation shall ordinarily commence on the Thursday before Good Friday and end with Easter Tuesday. Easter.

The Long vacation shall ordinarily commence on the second Friday in September and end about the middle of November and shall include Mohaloya, Durga, Lakhi and Kali Pujas, Bhratridwitya, Jagadhatri and Kartick Pujas and any Mahomedan holidays falling within the period of the Long vacation. Long.

The Christmas vacation shall ordinarily commence on the 23rd December and end on the 1st January. Christmas.

3. Unless otherwise specially ordered by the Chief Justice, the Courts and offices shall be open on every day of the year except on Sundays and the following holidays and vacations :— Close holi-
days.
[C/. B. 3.]

Mohurram.

Sri Panchami.

Shivaratri.

Fateha Doaz Daham.

Dole Jatra.

Chait Mahabishaba Sankranti.

Dasohara.

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P. 3.

Birthday of His Majesty the King-Emperor.
Janmashtomi.

Eed-ul-Fitr.

Eed-uz-Zoha.

And during the Easter, Long and Christmas vacations (provision being made for urgent business).

CHAPTER IV.

THE OFFICERS: THEIR OFFICE HOURS AND GENERAL DUTIES.

1. Subject to any order made by the Chief Justice, the office hours in the several offices on the Original Side of the Court shall, during term, be from 10-30 A.M. to 5 P.M. except on Saturdays when they shall close at 2 P.M. No work, unless of an urgent nature, shall be admitted after 4-30 P.M. on ordinary days or after 1 P.M. on Saturdays.

Office hours :
during
term ;
[C]. C. 2 & 3.]
[C]. B. 3.]

During the Long vacation the office hours for urgent work only shall be from 11 A.M. to 2 P.M., except on Saturdays, Sundays and any of the Pujas or holidays mentioned in Chapter III, when provision will be made for very urgent business.

during
vacation.

During the Christmas and Easter vacations provision will be made for very urgent business.

2. No officer appointed by the Court or Sheriff shall be absent from Calcutta for more than twenty-four hours at a time without the leave of the Court or a Judge. But this rule shall not apply to Sundays or holidays.

Officers not
to leave
Calcutta
without
leave.
[C]. B. 6.]

3. The officers of the Court shall not, without the special permission of the Registrar, receive any pleading, petition, affidavit or like document on the file (except original exhibits), unless the same shall be fairly and legibly transcribed on durable paper, half foolscap size, and all office copies shall be transcribed in like manner.

Receipt of
documents
by officers.
[C]. C. 9A.]
[C]. B. 7.]

4. The several officers of the Court and the Sheriff shall keep, for every year, separate books for their respective offices for the several businesses belonging thereto.

Separate
books for
each year to
be kept.
[B. 8.]

5. Each officer shall safely keep all records and muniments belonging to his department and in his custody, and shall class them in regular order, so that recourse may be speedily had thereto.

Keeping of
records,
[B. 10.]

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r. 6-11.**

**Keeper of
Records.
[O. 4.]**

6. The Keeper of Records shall safely keep all records and muniments delivered to him, and shall class them in regular order, so that recourse may be speedily had thereto; and shall also keep a book in which he shall make dockets of the names of the parties, their attorneys and the number of the roll; and shall also keep an alphabetical list of the names of the parties.

**Account of
stamps.
[O. B. 12.]**

7. The Examiner of Stamps shall keep an account of all stamps cancelled in the respective offices, specifying the value thereof.

**No officer to
be Receiver
without pre-
vious sanc-
tion.**

8. No officer of the High Court shall accept the office of Receiver in any suit, matter or appeal without the previous sanction of the Chief Justice.

[B. 13.]

See Act XXVIII of 1866, s. 12.

**Search of
records,
copies.
Inspection
by a party.**

**[New.]
[O. C. 14,
231.]**

9. Subject to the special provisions contained in any other rule, a party to a suit or proceeding who has appeared shall be allowed search, inspection or copies of all pleadings, proceedings, depositions, orders, decrees and other documents filed in such suit or proceeding or such parts thereof as he may require, on payment of the proper fees and charges, except that in execution matters the granting of the same shall be in the discretion of the Registrar subject to the order of a Judge.

**Search of
records,
copies.
Inspection
by non-party
[New.]
[O. C. 14.]**

10. The officer in charge of records shall, at the request of any person not a party to a suit or proceeding, grant or allow search, inspection or copies of all pleadings, proceedings, depositions, orders, decrees and other documents filed in such suit or proceeding or such parts thereof as he may require, on payment of the proper fees and charges, except during the pendency of such suit or proceeding when the granting of same shall be in the discretion of the Registrar subject to the order of a Judge.

**Consent or
notice.
[New.]**

**Only notes
allowed.**

11. Search or inspection under the last two rules during the pendency of a suit or proceeding shall only be allowed in the presence, or with the consent, of the parties appearing, or after 24 hours' notice in writing to them. On search or inspection, a party shall not be allowed to take copies, but only notes of such search or inspection.

This and the two previous rules are new, to cover our practice. Cf. Practice Master's Rules (Yearly Practice, 1913, p. 973).

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—
R. II—17.

12. Where the copies under rule 9 or 10 are required to be certified as provided in section 76 of the Indian Evidence Act, such certificate may be dated and subscribed by any officer of the Court to be deputed by the Registrar for the purpose. Certified copies. [New.]

13. Where office copies of depositions of witnesses examined in any suit or proceeding before the Court, Judge or an officer are required for the purposes of an appeal, a fair copy of every such deposition shall be settled by the Judge or officer by whom the same may have been taken down, and all office copies shall be made from the fair copy so settled. Office copies of depositions. [Cf. O. 26.]

14. The officer attesting copies shall write his initials with the date across the stamp affixed thereon, after first satisfying himself that the stamp has been cancelled by a portion of the label being punched out in such a manner as to remove neither the figure-head nor that part of the label upon which its value is expressed. Stamp to be defaced. [Cf. O. 18.]

Compare with Government of India Financial Department Resolution No. 3373, dated 24th September 1876 (Stamp Manual, p. 55). The rule follows what has been our practice for years.

15. No order of the Court or a Judge shall be necessary for the production or delivery of any records, proceedings or other papers by any officer of the Court in Court, or to any other officer of the Court for the purpose of any further proceeding in, or for the purpose of being produced in Court in any cause or proceeding. The same shall be produced on a written requisition from the attorney or party in the cause giving 24 hours' notice of such production to the officer required to produce them. In any case in which the officer shall doubt the propriety of such production, he shall take the written direction of the Registrar as to such production. No order necessary for production of records or papers in Court, etc. [Cf. O. 5.]

16. No records or proceedings which have been filed shall be produced elsewhere than in the High Court, without the order of the Court or a Judge. Production of records elsewhere. [New.] [Cf. O. 139A.]

17. Where any communication, other than a merely formal letter, is made to the Chief Justice and Judges, Communications to be

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rr. 17-21.
the Chief
Justice.
[New.]

the Registrar, on receipt of the original letter, shall cause it to be filed, docketed and submitted to the Chief Justice for orders.

Provision for
performance of
duties of Registrar
during his
absence.
[Of. C. 455.]
[Of. B. 15.]

18. In case of the temporary absence of the Registrar, or of his being occupied or employed on special or other duties, the Master, Deputy Registrar or other qualified officer may be authorised by the Chief Justice to perform any of the duties usually performed by the Registrar, whether as Registrar, Accountant-General, Taxing Officer, Sealer, or Keeper of the Records.

The Seal.

The seal.
[Of. C. 10,
11.]

19. The seal may be affixed to any writ, warrant, rule, order, summons, or other judicial process issued or made in the exercise of the Original Jurisdiction of this Court, or on appeal from the Original Jurisdiction, on the authority of the signature of the Registrar, Master, or Deputy Registrar; it may also be affixed to any summons to appear and answer or to any certified copy on the authority of the signature of the Assistant Registrar who under rule 1 of Chapter VIII or rule 12 of this Chapter is authorised by the Registrar to sign the same. It may also be affixed to any writ, warrant, rule, order, summons or other judicial process issued or made in the exercise of the Original Criminal Jurisdiction of this Court or on appeal from the Original Criminal Jurisdiction, on the authority of the signature of the Clerk of the Crown.

*To Seal.
Summons
or certified
copy*

such document

Interpreters and Translators.

Oath or
affirmation by
Interpreter and Trans-
lator.
[B. 36.]

20. Every Interpreter and Translator, before his admission to office, shall make an oath or affirmation, that he will well and truly interpret and explain all questions put to and evidence given by witnesses, and translate correctly and accurately all documents given to him for translation.

See Oath's Act (X of 1878), s. 5.

Oath or
affirmation
by Munshi
and Reader.

21. Every Munshi and Reader of the Court, before his admission to office, shall make an oath or affirmation that he will truly and correctly and to the best of

his ability read such documents as he may be called upon to read for the purpose of translation.

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rr. 21—23.

[Cf. C. 22.]

22. A register shall be kept showing the work that comes in (per folio), the date of receipt and of completion, the number of folios done by each member of the department, and the amount of fees paid.

Register of
work, etc.

[Cf. B. 32.]

23. A return showing the work done by the several members of the department shall be forwarded monthly by the Chief Interpreter to the Registrar.

Monthly
return of
work.

[Cf. B. 33.]

24. Documents which are in a language known to any of the Translators and in a character which can be read by any of the Munshis or Readers and which require to be transcribed in the Bengali character before they can be translated into English, shall be read by a Munshi or Reader of the Court to, and transcribed by, one of the Bengali Mohurirs, who shall sign the transcript made by him after the words "Transcribed by me." Such transcript shall be examined by one of the sworn Translators with the original, with the assistance of the Munshi or Reader, and be signed by him under the words "The above is a correct transcript as read by the Munshi or Reader." Such transcript shall be attached to and produced in Court with the translation.

Transcription
of
documents
in the
Bengali
character.

[New.]

[Cf. C. 23.]

[Cf. B. 37.]

25. Translation of a document in a language which the Translators do not know shall be made by special Translators, if any, appointed by a Judge. Applications for such translation shall be made to the Registrar, who shall forward the same to the Special Translators. In the absence of Special Translators, the document shall be translated by a person who knows both such language and English, and the document shall not be accepted in evidence, unless accompanied by the translation and an affidavit of such person, stating that he knows such language and English, and that he has truly and faithfully translated the document.

Translation
where
language of
document
not known
to the
Translators.

[New.]

[Cf. C. 24D.]

The first portion of this rule is new, and may be utilised where, in a suit or matter, it is likely that documents in a language unknown to the Court translators will from time to time require to be translated. Application for the appointment of a Special Translator is made in writing to the Registrar, supported by an affidavit of the proposed Translator as to his knowledge of English and of the language to be translated. The papers are placed before a Judge and, with his sanction, an order of appointment drawn up.

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See Suit 788/10, *Strube v. Walker, Goward & Co.* A Mr. Tapper was appointed on 14th July 1910 and a Mr. Turnbull on 19th February 1912 for the purpose of translating "any documents in connection with this suit." The documents were those in connection with a Letter of Request issued in the suit to Germany.

Documents not to be accepted in evidence unless translated.

[*New.*
[*Of. C. 26C.*
and 741.]

Sending documents for translation. Consequence of delay in sending.

Date of hearing to be stated in the *præcipe*.
[*C. 26 B.*]

Change or discharge of attorney pending translation.
[*Cf. B. 46.*]

Document in pencil writing.
[*New.*]

Inspection in Translators' Department.
[*New.*]

26. Except with special leave, no document in a language other than English shall be accepted in evidence, unless translated in accordance with these rules.

27. An attorney or a party in person shall, as soon as practicable, send to the Translators' office for translation any vernacular document on which he may rely. Where he fails to do so, or sends the same so late that the translation is not ready for use when the case is called on, the Court or Judge may disallow the costs of such translation.

28. Where an attorney or a party in person sends any document for translation, he shall, so far as he can, state in the *præcipe* the probable date of the hearing of the suit or matter in which the translation is to be used.

29. Where there is a change or discharge of attorney after an attorney has sent a document for translation to the Translators' Department, the Translators' Department shall be informed at once by such attorney of such change or discharge and of the name of the new attorney, or the address of the client if he appears in person, as the case may be.

This is new to Calcutta.

30. Where a document, which is wholly or in part in pencil writing, is sent by a party or his attorney for translation, it shall be accompanied by a copy thereof in ink, certified by the party or his attorney to be a true copy. Such copy shall be attached to and produced in Court with the original.

31. Inspection of any book or document lodged in the Translators' Department by one party shall not as a rule be inspected there by any other party, but in special cases and after hearing both parties the Registrar may allow such inspection on payment of the usual fees for inspection in the Court.

This and Rule 80 are new but in accordance with our practice. The latter portion of Rule 81 will enable the Registrar to deal with delay caused by either side.

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ss. 81—85.

32. Where translation of a document, or entry or entries in the vernacular, in the possession of one party is required by the other party for the hearing of the suit, the former, on the application of the latter, shall immediately send the originals to the Translators' Department for translation, or allow the latter to take copies thereof, and after examination of such copies without any delay certify them to be correct copies. Translations of such certified copies shall be admissible at the hearing. In dealing with the costs of the suit, the Court or a Judge shall have regard to any failure to comply with the provisions of this rule.

Translation of document in the possession of another party.
[C. 26 E.]

33. Where a party to any suit or matter or his attorney requires a document to be translated within a specified time, the Registrar may upon production to him of a certificate from the Chief Interpreter that the work cannot be done in the ordinary course within such time, allow the work to be done after office hours, on payment of the usual Court fee in stamps, and an additional fee of Rs. 1-8 per folio for Nagri documents and Re. 1 per folio for other documents, in cash, to the Interpreter and Reader doing the work.

Translation of document after office hours.
[New.]

Fee for same.

Such additional fee shall not be allowed in any event as between party and party.

34. An attorney, who shall obtain a translation of any document to be used for the purposes of a suit or matter, shall, where required, furnish a copy of such translation to the opposite party or his attorney, on payment of half the translation charges.

Furnishing copy of translation.
[C. 26 G.]

Charge for same.

35. The Court or a Judge may, on application by any party, at any time, require any other party to the suit, appeal or matter to produce, and leave in the Translators' office, any document not in the English language in his possession, for the purpose of being officially translated, and may order that the translation when made shall be filed with the proceedings in the suit.

Compulsory lodgment for translation.
[C. C. 26 H.]

CHAPTER V.

EXERCISE OF ORIGINAL JURISDICTION.

Exercise of
Original
Jurisdiction.
[C. 51A.]
[B. 62.]

1. Any Judge of the High Court may, subject to any rules of Court, exercise, in Court or in Chambers, all or any part of the jurisdiction vested in the High Court on its Original Side.

See note to clause 18 of Letters Patent (1865), *ante*, p. 85.

Hearing by
two or more
Judges—how
obtained.
[B. 63.]

2. Where it shall appear to any Judge, either on the application of a party or otherwise, that a suit or matter can be more advantageously heard by a bench of two or more Judges, he may report to that effect to the Chief Justice, who shall make such order thereon as he shall think fit.

CHAPTER VI.

CHAMBER BUSINESS.

1. One Judge will sit in Chambers every week day, unless notice to the contrary be previously given, and all applications in Chambers shall ordinarily be made to that Judge only.

Judge's
sittings in
Chambers.
[Cf. C. 513 &
513A.]
[Cf. B. 68.]

Cf. Rule 6 of Chapter VII and Rule 1 of Chapter XX, post.

2. The Court in its discretion may, at any time, direct any matter to be referred to, or disposed of by, a Judge or officer in Chambers, and a Judge sitting in Chambers may at any time, if he thinks fit, direct any application made to him in Chambers to be made in Court by counsel, or transfer any matter to the Court at any stage thereof.

Reference
from Cham-
bers to Court
and vice
versa.
[Cf. C. 514.]
[Cf. B. 70.]

3. The mode of proceeding in Chambers on any application, which may be made *ex parte*, shall, except where otherwise ordered or prescribed, be by petition, and where notice is required to be given, shall, unless otherwise ordered or prescribed, be by summons (Form No. 1). Such summons shall be prepared by the party obtaining it or by his attorney, and be signed by the Registrar or Master. Where affidavits are intended to be used, notice thereof shall be endorsed on the summons.

Mode of
proceeding
in Chambers.
[Cf. C. 516
and 517 and
522.]

4. With the summons shall be served a copy of every affidavit mentioned in the notice endorsed thereon, except of affidavits so mentioned used in former proceedings in this Court in the same suit or matter.

Service of
affidavits
with sum-
mons.
[Cf. C. 520.]

The last words "in this Court in the same suit or matter" have been added. It will now be necessary to serve copies of affidavits filed in another suit or matter.

5. Unless otherwise ordered, such summons, not being an originating summons, shall be served two clear days before the return thereof. A summons may be made returnable in a shorter time, by leave of the Registrar or Master, which shall be endorsed on it. In case of summons for time only, the summons may be served on the day previous to the return thereof.

Service and
return of
summons.
[Cf. C. 518.]

The last para. is new, being taken from R. S. C., O. 54, r. 4 E.

Ch. VI.
R. 6—10.

Consequence
of non-
attendance.
[R. S. C. O.
LIV, r. 5.]

6. Where any of the parties to a summons fail to attend, whether upon the return of the summons or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, where, considering the nature of the case, he thinks it expedient so to do and may require such evidence of service as he may think fit.

Cf. with English rule. It is our practice to allow an affidavit of service of the summons and to require same where a party does not attend.

Reconsider
ation of *ex*
parte pro-
ceedings.
[R. S. C.
O. LIV, r. 6.]

7. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case, the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

A Judge has power to re-hear an application before the order has been drawn up, see dictum of Fry, L. J., in *re Adam Eyton & Co.* (1887), 86 Ch. D. 299—301 C. A., Cotton, L. J., doubting. See also in *re St. Nazaire Co.* (1879), 12 Ch. D. 88—91 C. A.; *Preston Banking Co. v. Allsup* (1895), 1 Ch. 144—145 C. A.; *Bright v. Sellar* (1904), 1 K. B. at p. 11.

In *re Roberts*, W. N. (1887) 231, Kay, J., held there was power to re-hear an application whether made in Chambers or in Court before it has been drawn up.

But after an order has been drawn up, passed and entered there is no jurisdiction to re-hear (*Preston Banking Co. v. Allsup*, *supra*).

For power to correct clerical mistakes see s. 152 of the Code.

Costs where
ex parte
proceeding is
not thought
expedient.
[R. S. C.
O. LIV, r.
7.]

8. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his attorney personally.

Attendance
on adjourn-
ment.

[R. S. C.
O. LIV, r. 8.]
[O. C. 821.]

9. Where a matter in respect of which a summons has been issued is not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

Inclusion of
several
matters in

10. In every suit or matter, where any party thereto makes any application in Chambers, either by

way of summons or otherwise, he shall be at liberty to include in one and the same application, all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application, it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, where the Judge thinks fit, be adjourned from Chambers into Court or from Court into Chambers.

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 n. 10—11.
 one applica-
 tion.
 [R. S. C.
 O. LIV, r. 2.]

11. The business to be disposed of in Chambers by a Judge shall consist of the following matters in addition to the matters which under any other rule or by Statute may be disposed of in Chambers :—

Business to
 be disposed
 of in Cham-
 bers by a
 Judge.
 [Oj. C. 513.]

1. Applications for payment or transfer to any person of any cash or securities standing to the credit of any suit or matter where there has been a decree or order declaring the rights, or where the title depends only on proof of the identity or the birth, marriage or death of any person.
2. Applications for payment to any person of the dividend or interest on any securities standing to the credit of any suit or matter whether to a separate account or otherwise.
3. Applications by receivers, guardians and others, relating to the management and disposal of property.
4. Applications as to the guardianship and maintenance or advancement of infants.
5. Applications for orders of reference to arbitration in a pending suit unless the suit is in one of the Peremptory Lists for the day.
6. Applications under section 39 of the Presidency Small Cause Court Act for an order removing a cause into the High Court.
7. Applications in all matters arising under the Indian Trustees Act.
8. Taking the acknowledgments of married women (where not taken by a Commissioner).

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r. 11—12.

9. Applications for the taxation or delivery of bills of costs, and for the delivery by any attorney of deeds, documents, and papers.
10. The admission and rejection of plaints.
11. Applications for leave under clause 12 of the Letters Patent.
12. Applications for time to plead, for leave to amend, for discovery and production of documents, and generally all applications relating to the conduct of any suit or matter.
- [*Cf. C. 375.*] 13. All proceedings in execution, or otherwise under a decree or order.
14. All proceedings on the returns of writs or notices issued before or after judgment requiring cause to be shown in Chambers.
15. Applications for the attachment of the property of an absconding witness.
16. Applications for orders for the production of prisoners and others under the Prisoners' Act, 1900.
17. Applications to confirm or for further consideration on a report where the order of reference was made by a Judge in Chambers.
18. Such other matters as are not expressly required to be disposed of in Court, and which the Judge thinks fit to be heard in Chambers, and such other applications as are directed to be made in Chambers.

Such other applications.—See List, *post*, p. 667.

Business
which may
be transacted
by Registrar
or Master.

Exceptions.

12. The Registrar or Master may transact all such business and exercise all such authority and jurisdiction as under these rules may be transacted or exercised by a Judge in Chambers, except where otherwise prescribed, or in respect of the following proceedings and matters, that is to say:—

[*Cf. C. 513,*
551 A.]
[*Cf. C. 530.*]

- (a) All contested applications except with the consent of the parties concerned or their attorneys;

- (b) Applications under rule 11, clauses 1 to 8, 11 and 15 to 17;
- (c) The making of an order for the issue of a warrant of committal; and also
- (d) Applications, matters and proceedings under Chapter XII, r. 17, and Chapter XIII, rr. 1 and 6.

Except where otherwise prescribed.—See List, *post*, p. 667.

13. Where any matter appears to the Registrar or Master proper for the decision of a Judge, the Registrar or Master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Registrar or Master with such directions as he may think fit.

Reference by Registrar or Master to a Judge.
[R. S. C. O. LIV, r. 20.]

14. All applications referred, by the Registrar or Master to a Judge, shall be made to the Judge on a day to be endorsed by the Registrar or Master on the summons or petition.

Date of such reference to be endorsed.
[C. 516B.]

15. Any person affected by any order or decision of the Registrar or Master may appeal therefrom to a Judge. Such appeal shall be by way of endorsement on the summons by the Registrar or Master at the request of any party, or by notice (No. 1A) in writing to attend before the Judge without a fresh summons, within five days after the decision complained of, or such further time as may be allowed by a Judge or the Registrar or Master. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing.

Appeal from Registrar or Master to a Judge.
[Cf. R. S. C. O. LIV, 21, Cal. 531.]

This is new to this Court. The rule provides alternative ways in which a party dissatisfied with the decision of the Registrar or Master can appeal to the Judge. The usual way of appealing is by notice (see Form No. 1 A in Appendix B, *post*, p. 445). The method of appealing by endorsement is, in England, generally refused except when the matter is urgent and the appeal by notice would involve undue delay.

It is not necessary that the order appealed from should be drawn up before giving the notice of appeal or before the appeal is heard. (Yearly Practice, 1912, p. 788.)

16. Attorneys for the parties will be heard before a Judge in Chambers.

Attorneys may be heard in Chambers.
[C. 526.]

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rr. 17-22.

Applications
in which
counsel
appears, to
be taken
last.

[C. 528.]

Signing of
Judges' *fiat*.

[Cf. C. 513B.]

[Cf. B. 78.]

17. Applications before a Judge sitting in Chambers, in which counsel appears on either side, shall be taken after all others.

18. In any case in which the signature of the Judge, who has made an order in Chambers, cannot be obtained to the *fiat* by reason of his absence or other cause, such order may be signed on his behalf by any other Judge; and similarly the *fiat* on an order, made by the Registrar or Master, may be signed by the other of them.

Costs of abandoned
summons,
without
notice of
affidavit.

[Cf. C. 523.]

19. Where a party abandons a summons, which has been served without notice of his intention to use any affidavit, he shall pay to the other party, or to each of the other parties entitled to separate costs, the sum of Rs. 12* for costs, to be certified by the Taxing Officer on production to him, without any formal order thereon, of the copy of the summons left at the time of service.

Costs of such
summons
with notice
of affidavit.

[Cf. C. 524.]

20. Where a party abandons a summons, which has been served with notice of his intention to use any affidavit, he shall pay to the other party, or to each of the other parties entitled to separate costs, such costs as may be allowed by the Taxing Officer, who is required to tax such costs on the production to him of the copy of the summons left at the time of service, without any formal order being drawn thereon directing such taxation.

Enforcement
of costs of
such sum-
mons.

[C. 525.]

21. Where it is necessary to enforce the payment of the costs of an abandoned summons payable under either of the last two preceding rules, an order for that purpose may be obtained, without notice, upon a petition supported by the allocatur of the Taxing Officer. The order shall be drawn up with a direction for the payment of the costs of obtaining it, and of execution.

Enforcement
of direction
by Registrar
or Master as
to costs.

[C. 516 E.]

22. Where it is necessary to enforce payment of costs under a direction of the Registrar or Master, an

* Receiving summons	Rs. 2
Attending Chambers thereon	10
TOTAL	12

order for that purpose shall be obtained from a Judge. Applications for such orders may be made, without notice, by petition supported by a certificate of the officer whose direction is sought to be enforced.

23. Unless otherwise prescribed or ordered, the costs of all applications and proceedings in Chambers shall be costs in the suit or matter.

Cost of
Chamber
applications
and pro-
ceedings.
[Cf. Cal. 518
D.]

24. The forms to which reference is made in this Chapter are in Appendix B.⁽¹⁾

Forms.
[New.]

(¹) *Post*, p. 445.

CHAPTER VII.

INSTITUTION OF SUITS.

The plaint
to be written
or printed :
[*Cf. C. 168.*]
[*Cf. B. 86.*]

manner of :

contents :

authentic-
ation of alter-
ations.

When Advo-
cate General
a party : or
a person's
name is
used as
relator.
[*C. 168 B.*]
[*B. 86.*]

Translation
of documents
filed with
plaint.
[*Cf. C. 238*
A.]
[*Cf. B. 91.*]

1. The plaint shall be legibly written, or printed, in the English language, on durable foolscap paper or other paper similar to it in size and quality, bookwise, and on one side only of the paper, with not more than 20 or less than 18 lines, of about 10 words in each line in each page, and with an inner margin of about an inch and a quarter wide. It shall be stitched bookwise in the following order : (1) Warrant to sue, where the plaintiff appears by an attorney, (2) Concise statement, (3) The plaint, (4) List of documents upon which the plaintiff relies, (5) List of documents annexed to plaint, (6) Exhibits or copies of exhibits annexed. Dates and sums occurring in the plaint shall be expressed in figures, sums being stated in rupees, annas and pies, and the corresponding English dates being added, where the dates are not according to the English calendar. The plaint shall comply with O. VI of the Code, and shall contain the particulars required by O. VII, rr. 1 to 8 of the Code. Every alteration in the plaint shall be marked and authenticated by the initials of the person verifying the plaint, or with the leave of the Judge or Officer, by the attorney.

2. Where the Advocate General is a party to a suit in his official capacity, he shall be named and described in the pleadings by his official title only. Before the name of any person shall be used in any suit as relator, such person shall sign a written authority to the attorney or attorneys for that purpose, and such authority shall be filed in the Registrar's office.

3. The Judge or officer to whom the plaint is presented may, where he shall think fit, require a translation of any document not in the English language to be filed with the plaint. Such translation shall be in accordance with the rules of the Court and the non-delivery thereof, where required, shall have the same effect as if the original document had not been produced.

4. Where a plaint is admitted, the words "Admitted this day of _____," together with a note of any special leave granted, and where the suit is marked as a commercial suit under Chapter XII or as a liquidated claim under rule 5, a note to that effect shall be endorsed thereon and signed by the Judge or officer admitting the plaint; the words "Defendant to file written statement" being added where such statement is required.

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r. 4—7.

Endorsements on
plaint.

[Cf. C. 169.]
[Cf. B. 92.]
[Cf. C. 223.]

5. Any suit in which the claim is only for a debt, or liquidated demand, is a liquidated claim, and may be admitted and marked as such. A mortgage suit may be marked as a liquidated claim.

Liquidated
claim.

[New.]
[Cf. C. 275.]

For the purposes of this rule "debt" means a sum certain, or capable of being reduced to certainty by calculation, payable in respect of a direct and immediate liability by a debtor to a creditor; "liquidated demand" means that the amount is a matter only of calculation to be made from fixed data, so that any two people making it correctly must arrive at the same result.

[New.]

These definitions are taken from the Yearly Practice, 1912, p. 15.

6. For the purpose of interlocutory applications in Court prior to the hearing, each of the Courts on the Original Side shall bear a number, and every suit shall, unless otherwise ordered, be assigned by order of rotation, to Courts Nos. I and II, and be marked with the No. of the Court to which it has been assigned. All interlocutory applications in a suit, other than applications in Chambers, shall be made to the Court to which the suit has been assigned or transferred :

Assignment
of suits to
Courts.

Court applica-
tions to be
made to
what Court.

[Cf. C. 294
A.]
[Cf. B. 93.]

Provided that, where an additional Court is sitting to assist in the disposal of suits assigned to Courts Nos. I and II, applications in suits which are actually on the list of such additional Court may be made to such Court.

Provided.
[New.]

See Chapter X, Rule 20. Where a third Judge sits he will only try suits. Applications can only be made to him in suits actually on his list; or under Chapter XX, Rules 1 or 2, *post*, p. 226.

7. No costs for making or presenting any copy or copies of the plaint under O. VII, r. 9 of the Code No costs for copies of plaint unless

Ch. VII.**r. 7—13.**

required by
the Court.

[*B. 95.*]

[*O. 174.*]

Copies to be
compared,
attested and
served.

[*O. 175.*]

will be allowed, unless the Court has specially directed such copy or copies to be presented.

8. Such copy or copies, where so ordered, shall be presented to the Registrar, who shall cause the same to be compared with the plaint by one of the examiners, who shall attest such copy or copies if found correct, and the same, when so attested, shall forthwith be served upon the defendant or defendants as the case may be.

No process
until plaint
is marked.

[*Cf. B. 96.*]

9. No process shall be issued, until the plaint is marked as in rule 6 provided.

Advocate's
or attorney's
name to
appear on
pleadings.

[*Cf. C. 163A.*]

[*B. 97.*]

10. Where a plaint or a written statement has been drafted or settled by an advocate or attorney, his name shall appear at the foot thereof.

Special leave
to sue or
join causes
of action.

[*Cf. C. 167.*]

11. Every application for special leave to sue, under clause 12 of the Letters Patent, or under O. I, r. 8, O. II, r. 2 or 4, of the Code, may be made at the time when the plaint is presented, without petition, provided that the grounds, upon which such application is made, are set out with sufficient clearness in the body of the plaint.

Verification
by person
other than
party plead-
ing.

[*Cf. C. 171.*]

12. Where any person, other than a party verifies a pleading under O. VI, r. 15 of the Code, his fitness to so verify shall be proved by his affidavit, at the time the pleading is presented.

Original docu-
ments
produced
with plaint.

[*Cf. C. 237.*]

13. Where an original document is produced by the plaintiff under O. VII, r. 14 of the Code, the same shall be marked for identification, when presented to the Court or a Judge, by the principal officer in attendance, or when presented to the Registrar or Master, by the Registrar or Master respectively, and where, together with the original, a copy thereof is delivered to be filed with the plaint in lieu of the original, the same shall, before return of the original, be compared therewith by one of the examiners, who shall attest the copy if it be found correct.

Copies there-
of to be
compared.

CHAPTER VIII.

WRIT, SUMMONS, PROCESS.

1. Every writ, summons, precept, rule, order, warrant, and other mandatory process shall run and be in the name of our Sovereign Lord the King and Emperor of India, and shall have and bear the attestation of the Chief Justice or Acting Chief Justice, or in the event of a vacancy in the said office, of the senior Puisne Justice, and shall be signed by the Registrar, Master, or Deputy Registrar, or, in the case of a summons to appear and answer, by one of the Assistant Registrars as the Registrar shall from time to time direct, the day and the year of signing being set down beneath his signature, and shall be sealed with the seal of the Court; but the seal shall not be affixed to any injunction or warrant in the nature of a writ of *habeas corpus*, unless the same shall be countersigned by a Judge of the Court.

Writs, etc., to issue in name of the Crown.
Attestation of Chief Justice.
Signing.
[Cf. C. 9 and 10.]
[Cf. C. 737.]
Date and seal.

See clause 7 of the Letters Patent of 1865. Under Supreme Court Rule 9 (Belchambers' Rules and Orders, p. 71) orders and decrees as well as writs were issued in the name of the Sovereign. On the establishment of the High Court this practice was discontinued except as to writs.

In Bombay all decrees run in the name of the Sovereign. See Forms, pp. 177, 185 *et seq.* of Bombay Rules of 1909; but not all orders. (See pp. 183, 215 and 216.)

In future all decrees and orders will be issued in the name of the Sovereign. "Order" in clause 7 of Letters Patent and in this rule includes "Decree."

2. Unless otherwise ordered, the summons to a defendant to appear and answer shall be in one of the forms Nos. 2 and 3, and shall bear the date of the day on which the plaint shall be admitted.

Forms of summons.
Date.
[Cf. C. 182.]

The Code provides a form of summons for settlement of Issues. Our form will be for final disposal. Where it is desired to have a suit set down for settlement of Issues, application for that purpose should be made. (See Chapter XIV, Rule 6, *post*, p. 190.)

3. Unless otherwise ordered, every summons to appear and answer shall be returnable by the Sheriff to the office of the Registrar, immediately after the service thereof, but not later than—

Summons when returnable.
[Cf. C. 184.]
[Cf. B. 101.]

(1) Where the defendant resides or all the defendants reside within the local limits of the

Within local limits.



Ordinary Original Civil Jurisdiction of this Court, four weeks from the date of the summons :

Within.
Bengal, etc.

(2) Where the defendant resides or any of the defendants reside beyond such limits, but within the province of Bengal, of Bihar and Orissa, or Assam, six weeks from the date of the summons :

Elsewhere in
British
India.

(3) Where the defendant resides or all the defendants reside elsewhere in British India, eight weeks from the date of the summons :
and

Outside
British
India.

(4) Where the defendant resides or all the defendants reside outside British India, twelve weeks from the date of the summons.

Summons to
require
appearance
and written
statement
to be entered
and filed.

[*Cf. C. 183.*]
[*Cf. C. 222.*]

Time for
same.

4. Unless otherwise ordered, every summons to appear and answer, other than a summons in a summary suit, shall require every defendant to enter an appearance, and to file a written statement within such time, after the service of the writ, as the Registrar may fix, having regard to the residence of the defendant or defendants as given in the plaint.

A Table will be framed in the Registrar's office which may be varied from time to time when necessary.

Date of issue,
etc., to be
noted in the
margin.

[*Cf. C. 179.*]

5. Every summons to appear and answer shall show, in the margin, the date on which it was issued, and the date of the filing of the plaint, and there shall be endorsed thereon the address for service under rule 24, where the plaintiff sues in person, or the business address of the attorney, where he sues by an attorney; and where the summons has been amended, it shall also show in the margin the date of the order to amend.

Summons to
be delivered
to the Sheriff
within 14
days.

[*Cf. Cal. 176,*
198.]

6. Every summons to appear and answer shall be taken out and delivered to the Sheriff, for service within the local limits of the jurisdiction of this Court, or for transmission for service elsewhere. Unless an extension of time is obtained, it shall be taken out and delivered to the Sheriff within 14 days from the filing of the plaint, or the date of the order of amendment.

Sheriff
not to receive
summons

7. Unless otherwise ordered, no summons shall be received by the Sheriff for service or transmission,

after the expiration of the 14 days mentioned in rules 6 and 8.

after time.
[Cf. C. 180.]

8. Where, upon the further amendment of any summons to appear and answer, the Registrar or Master shall be of opinion that a fresh summons should be substituted, such fresh summons shall be prepared, and, upon payment of the usual fees, taken out, and, within 14 days from the date of the order, delivered to the Sheriff for service.

Fresh summons upon further amendment.
[Cf. B. 104.]

9. Except as provided by rule 8, a fresh summons to appear and answer shall not be issued without an order to be obtained in Chambers.

Fresh summons, except under rule 8, to be applied for.
[Cf. Cal. 188.]

10. No summons to appear and answer shall be issued by the Registrar, unless Court-fee stamps denoting the amount of fees payable both for issuing and filing the same shall be provided; or shall be received by the Sheriff for service, unless the fee payable for a special return be deposited with him. Where an ordinary return is made to a summons, the amount of the difference, between the fee payable for such return and the higher fee payable for a special return, shall be paid back to the plaintiff or his attorney.

Fees for summons to be prepaid.
[Cf. C. 181.]

Refund of excess fee by Sheriff.

11. Where the defendant resides within the jurisdiction of another Court in British India, and where there is communication by registered post between Calcutta and such place, the summons to appear and answer may, where so directed by a Judge or by the Registrar or Master, be addressed to the defendant at the place where he is residing, and sent by the Sheriff to him by registered post.

Service by registered post.
[Cf. B. 107.]

This is a new provision based upon the Bombay rule, which latter rule, however, requires no direction to be taken. But see r. 12 of O. 5, C. P. C., which requires personal service *where practicable*.

This rule will be of use in special cases.

12. The plaintiff in any suit may, at the time of the institution of the suit or at any time within 12 months thereafter, obtain, by requisition in writing to the Registrar and upon payment of the same fee as for an original summons to appear and answer, the issue of one or more concurrent summons or summonses,—each concurrent summons to bear *teste* of the same day as

Concurrent summons.
[R. S. O. O. VI, r. 1.]

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rr. 12-15.

Proviso.

the original, and be marked with the word "Concurrent," and the date of issuing the concurrent summons; provided always that such concurrent summons or summonses shall only be in force for the period during which the original in such suit shall be in force.

Taken from the English rules. We have in practice, by leave of a Judge, issued duplicate writs in cases where there were many defendants in different parts of the country.

Costs of application to receive summons after time.

[*Cf. Cal. 188.*]
[*Cf. Cal. 189.*]

13. The costs of an application for leave to the Sheriff to receive the summons after expiry of the 14 days mentioned in rule 6 or 8, or of an application for extension of the returnable date, or for a fresh summons, shall not be allowed as costs in the cause, unless so ordered on its being shown by affidavit, that the plaintiff is not in default, and in the case of a fresh writ, that proper endeavour has been made on the part of the plaintiff to serve the first or previous writ.

No fresh summons till return of first.

Service of writs, etc., by Sheriff.
[*Cf. Cal. 187, 189.*]

Unless otherwise ordered, a fresh summons to appear and answer shall not be granted till the return of the first writ.

Exception.

14. All writs for the attachment of property, or the arrest of any person, in any civil suit, within the local limits of the jurisdiction of this Court, all prohibitory orders, citations, notices to respondents, and all other writs and judicial process issued by this Court for service or execution within the local limits aforesaid, except such as may by O. XLIX, r. 1, of the Code or otherwise be served by the attorneys in the suits or by persons employed by them, shall be delivered to the Sheriff for service or execution, unless the Court or a Judge shall otherwise order :

Proviso.

Provided that a party appearing in person may serve any such process as may be served by an attorney.

Appearance of Parties and Service of Process.

Entering appearance to a writ.
[*Cf. Cal. 139, 206.*]

15. A defendant shall enter his appearance to a writ of summons by filing with the proper officer in the office of the Registrar, on or before the day fixed for his appearance in the summons, a memorandum in writing dated on the day of its delivery and containing the name and place of business of the defendant's

attorney, or stating that the defendant defends in person and containing his name and place of residence. (Forms Nos. 4 and 5.)

Forms.

16. In default of an appearance being entered within the time mentioned in the summons for such appearance, or as hereinafter provided, the suit, as to the defendant or defendants in default, will be liable to be heard *ex parte*.

Default of appearance.
[C. 207.]

17. An appearance shall be accepted, without leave, at any time before the suit has been set down in the Peremptory List of undefended suits, or after a decree has been made.

Appearance without leave.
[C. 208.]

18. The attorney of a defendant, or a defendant appearing in person, shall forthwith give notice of his having entered appearance to the plaintiff's attorney, or, if the plaintiff sues in person, to the plaintiff himself.

Notice of entering appearance.
[New.]

The address for service will be found on the summons. (See Rules 5 and 24.)

19. An appearance shall not be accepted, after the suit has been set down in the Peremptory List of undefended suits and before the hearing, without the special leave of a Judge, to be applied for by summons in Chambers. Where leave is granted, the sum of Rs. 31* shall, unless otherwise ordered, be paid by the applicant to the plaintiff for his costs of the application. The order shall specify a time within which appearance is to be entered.

Appearance with special leave.
[C. 209.]

Costs.
Order.

20. An appearance for a minor, or a person of unsound mind, shall be entered by his guardian for the suit.

Appearance for minors and persons of unsound mind.
[C]. C. 215.]

21. Unless the Court or a Judge shall otherwise order, the service of a summons to appear and answer shall be proved by the production of a certificate of the Registrar, of appearance having been entered, or where no appearance has been entered, by evidence

Proof of service of summons.
[C]. C. 191.]

	Rs.
*Attending, receiving summons	2
Attending before the Judge in Chambers	10
Half fee paid to Counsel on <i>ex parte</i> brief	17
Attending to fee Counsel	2
Total	31

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showing that the summons was served in the manner provided by the Code or by rule 11. Such proof shall ordinarily be by the affidavit of the serving officer, and (as to such matters as the serving officer cannot speak to of his own knowledge) of the person who attended the serving officer for the purpose of identification at the time of service, or of such other person or persons as can speak to the identity of the person served, or to other matters necessary to be proved in respect of the service.

Proof of
service
through
another
Court.

[B. 110.]

Application
or
substituted
service.

Affidavit in
support
thereof.

[C. 192.]

22. Where the summons has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.

23. Application for substituted service of a summons to appear and answer shall be made by petition in Chambers. The application must be supported by an affidavit, or, in the case of service through another Court, by the deposition or affidavit of the officer who attempted to make the service—where an attempt to serve has been made—and of such other person or persons as may have accompanied him for the purpose of pointing out the party to be served, stating when, where and how such service was attempted to be made.

The words "where an attempt to serve has been made" are new. There are cases where it is useless to make the attempt.

Service on
party in
person.

Address for
service.

[Oj. C. 139.]
[Oj. C. 195.]

24A

Service on
attorney.

[Oj. C. 194.]

24. Every party, not appearing by attorney, shall enter his name and place of abode particularly described, as also an address within the local limits of the Court to be called his address for service, in a book to be kept by the Registrar, and unless otherwise ordered, all notices and other judicial process required to be served on any such party, shall be deemed to have been duly served on him if left at his address for service.

25. Service of any notice, process or other document on the attorney of any party, may be effected by delivering to the attorney or leaving the same with a clerk in his employ at his place of business.

Process.
Mode of
service.
[New.]

26. Except where otherwise provided by Statute or prescribed by Rules of this Court, all notices, orders or other documents, required to be given to or served on

any person, shall be served in the manner provided by the Code for the service of summons.

Except where otherwise provided.—For example, see previous rule and Chapter XVI, Rule 29, *post*.

27. Service of all notices, orders, summonses and other judicial process shall be proved by affidavit stating when, where, how, upon whom and by whom such service was made. Proof of service of notices, etc. [C. 196.]

28. Where personal service of any writ, notice, pleading, order, summons, warrant or other document, proceeding or written communication is required, the service shall be effected, as nearly as may be, in the manner prescribed for the personal service of a summons to appear and answer. Personal service of writs, etc. [New.]

29. The forms to which reference is made in this Chapter are in Appendix B.(¹) Forms. [New.]

(¹) *Post*, p. 445.

Ch. IX.
rr. 1-6.

CHAPTER IX.

WRITTEN STATEMENT AND SET-OFF.

Rules as to
plaints where
applicable.

[Cf. C. 218.]

[Cf. C. 220.]

[Cf. B. 113.]

1. Rules as to complaints so far as the same are applicable shall, *mutatis mutandis*, apply to written statements; the word *plaintiff* therein being read for the purposes of this rule as though it were *defendant*, where the context so permits.

Written
statements
when not to
be received.

[Cf. C. 226.]

2. No written statement of a defendant shall be received unless an appearance has first been entered, nor, where the defendant is *sui juris* and where a written statement has been called for, unless the same is tendered before the plaintiff has taken any step to compel the filing thereof.

The last portion covers our practice.

Where
written state-
ment is not
filed, suit may
be transferred
to the Per-
emptory Un-
defended
List.

[New.]

3. Except as provided by Chapter X, rule 27, (a) where the written statement of a sole defendant is, or the written statements of all the defendants are, not filed within the time fixed by the summons, or within such further time as may be allowed, or (b) where one or more of several defendants has or have failed to enter appearance, and the other or others has or have entered appearance but failed to file a written statement within the time fixed by the summons or further time allowed, the plaintiff may apply by summons in Chambers to have the suit transferred to the Peremptory List of undefended suits.

r (a) where
the defendant
has failed to
appear, (a),
II, h. 1386.

This rule and the next provide for what is our practice.

Suit heard
ex parte
against
defendants
in default.

[New.]

4. Where one or more of several defendants has or have filed a written statement or written statements, but another or others has or have not, the plaintiff may, after the expiry of the time fixed or extended time allowed for filing the same, apply by summons in Chambers for an order that the suit be heard *ex parte* as against the defendant or defendants in default.

Written
statement
of plaintiff :
application
for same.

[Cf. C. 224.]

5. A plaintiff shall not be required to file a written statement, except on the application of the defendant, to be made by summons in Chambers. The application must be supported by an affidavit, stating the special

circumstances which make it necessary that the plaintiff should file a written statement.

6. Where a written statement is not called for by the Court, a statement containing particulars of set-off, or a voluntary statement, may be filed at any time before a suit has been set down on the Peremptory List of undefended suits, but not thereafter, without leave to be applied for in Chambers. A plaintiff may apply for such leave by petition *ex parte*. A defendant may apply for such leave by summons.

Voluntary statements or set-off when they may be filed.
[C. 228.]

7. The costs of a voluntary written statement filed by a plaintiff shall not be allowed, either as between party and party, or as between attorney and client, unless otherwise ordered.

Costs of voluntary written statements by plaintiff.
[C. 229.]

8. Where both the plaintiff and defendant are required to file written statements, either party, after filing his own written statement, shall be entitled to obtain an office copy of the statement of the other party.

Office copy of written statement when may be obtained.
[C. 232.]

9. Where two or more defendants are required to file written statements, a defendant, after filing his own written statement, shall be entitled to obtain an office copy of the statement of a co-defendant.

Office copy of co-defendant's written statement.
[C. 233.]

10. Where a defendant shall obtain a copy of a statement of a co-defendant, whether filed spontaneously or in compliance with an order, the costs of obtaining such copy shall, unless otherwise ordered, be borne by himself.

Costs of obtaining co-defendant's statement.
[C. 234.]

11. A defendant, not being *sui juris*, will not be required to file a written statement, but a voluntary statement may be filed on his behalf, by the guardian for the suit assigned to him, within three weeks from the date of the order appointing such guardian.

Written statement of a defendant not *sui juris*.
[Cf. C. 236.]

The provision as to time is new.

12. A defendant, desiring to claim a set-off, shall, where required by the Court to file a written statement, state the particulars of his claim in such written statement. A separate statement containing the particulars of set-off need not be filed, and, where filed, the costs thereof shall not be allowed, unless otherwise ordered.

Particulars of set-off to be in written statement.
[C. 227.]

Costs of separate statement.

Set-off.—See note to O. 8, r. 8, in Woodroffe & Amir Ali's C. P. O.

Ch. IX.**r. 13.**

Notice of set-off and reply thereto.

[*New.*]

13. A defendant claiming a set-off shall forthwith give notice of the filing of his written statement to the plaintiff and to any defendant who has appeared, and a reply thereto may be filed within 10 days from the filing of the written statement, or within such further time as may be allowed.

CHAPTER X.

LISTS OF SUITS, ETC.

The rules in this Chapter are to a great extent new. The General Scheme is as follows :—

One General Cause List will be kept in the Registrar's office in which all suits under various headings given will be entered; separate suit registers being kept in the case of Admiralty, Matrimonial and Contentious Testamentary suits in the Testamentary Department, and in the case of other suits in the Order Department. This is in accordance with our present practice.

After the return and filing of the summons or notice as mentioned in Rule 2 the Assistant in charge of the Cause Lists will enter the suits in the General List. " Commercial Suits " and " Liquidated Claims " will be marked as such in the General List.

Provision is made for " marking " a suit as a " Commercial Suit " on the admission of the Plaintiff in Chapter XII *post* and for marking " Liquidated Claims " in this Chapter (Rule 3), there being no necessity for a Special Chapter as to " Liquidated Claims."

Suits will be assigned to either Court I or Court II (see Ch. VII, r. 6, *ante*). Commercial Suits and Liquidated Claims will be assigned to Court No. I (Rule 6 of this Chapter).

There will be kept in the office for Court No I, 3 Prospective Lists, i.e., of suits ripe for hearing :—

- A. Commercial Suits,
- B. Liquidated Claims,
- C. Other Suits,

and for Court No. II a list D of suits other than Commercial Suits and Liquidated Claims.

The onus of saying when a suit is ripe for hearing is placed on the parties who best know when it is ready. (This follows somewhat the English practice of notice of trial. (See R. S. C. O. 36, r. 11.)

Under Rule 7 any party may by requisition have a case, which is, in his opinion, ready to be heard, set down in the Prospective List; at the same time giving notice to the other side, who, if not ready, can either arrange with the party putting the suit in the Prospective List, to have it taken out by requisition, or apply to the Registrar under Rule 8.

The requisition under Rule 7 cannot be given until, in Commercial Suits and Liquidated Claims, the expiry of one week, and in other suits 6 weeks, after the filing of the Written Statements of the defendants appearing. This should give ample time in ordinary cases to get ready and will, it is hoped, coupled with the power given to the Registrar under Rule 8 as to costs, prevent too many applications under the latter rule.

Where in a suit in the Prospective List a party dies, or the suit is stayed, information must be given to the Registrar who will remove the suit from that List (Rule 11). When it is again ripe for hearing it will be re-instated in the same way as before. So the Prospective Lists will contain only such cases as are ready to be heard and will come up into the Peremptory Lists strictly in turn under Rule 19. Where a day has been fixed a note will be made and appear in the Prospective List (Rule 18).

Provision is made for the Peremptory Lists, and for the entry therein of cases from the Prospective Lists.

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rr. 1-2.

Where a third Judge sits he will only try suits from Lists C and D (but see proviso to Rule 6 of Chapter VII as to his taking motions in suits actually on his list and Chapter XX, Rules 1 and 2, as to urgent motions).

Where no steps are taken to prosecute a suit or proceeding for a year or where it has not appeared in the Prospective List within 6 months from date of institution, provision is made (Rule 36) for placing same on the list for dismissal for default.

Provision is also made (Rule 14) for setting down a short cause. (See Yearly Practice, 1912, p. 1611, Resolutions of Judges (K. B. D.) 15.)

One General
Cause List.

[New.]

[Cf. C. 279,
300.]

1. One General Cause List shall be kept in the Registrar's office, in which all suits shall be entered under one or other of the following heads:—

Heads of suits
in such list.

- (1) Admiralty suits.
- (2) Extraordinary suits.
- (3) Small Cause Court transfer suits.
- (4) Matrimonial suits.
- (5) Testamentary suits.
- (6) Special suits, *i.e.*, the suits mentioned in clauses (b) and (e) of rule 2.
- (7) General suits, *i.e.*, all other suits including commercial suits and suits for liquidated claims, the last two classes of suits being marked as such in the General Cause List.

Time when
suits shall be
entered in the
General
Cause List.

[Cf. C. 273.]

2. The time, when suits shall be entered in the Registrar's office in the General Cause List under the proper heading, shall be as follows:—

- (a) All suits instituted in this Court in its Admiralty Jurisdiction after return and filing of the writ of summons or of the warrant of arrest:
- (b) Every special case under section 90 and O. XXXVI of the Code, after return and filing of the notice provided for in rule 3 (2) of that order:
- (c) All suits transferred to this Court under clause 13 of the Letters Patent, or sections 24 and 25 of the Code, or section 39 of the Presidency Small Cause Courts Act after they are numbered and registered as suits in this Court:

- (d) All suits arising out of proceedings instituted in this Court in its Testamentary and Intestate Jurisdiction, after the filing of the order directing the proceedings to be treated as a contentious cause :
- (e) All suits under Chapter XIII, after the return and filing of the originating summons :
- (f) All other suits after the return and filing of the writ of summons.

3. A suit may be marked as a liquidated claim on admission of the plaint, or thereafter on the requisition in writing of the attorney for any party or of any party acting in person.

Time for marking a suit as liquidated claim.
[New.]

4. Either party may apply by summons to the Judge in Chambers taking commercial suits, that any suit not admitted as a commercial suit may be so marked; provided that where such application is made by the plaintiff, in consequence of his omission to apply under Chapter XII, rule 2, when the plaint was presented for admission, he shall pay the costs of the application.

Application that a suit not admitted as a commercial suit may be so marked.
[New.]
[Cf. C. 303.]
Costs of such application.

5. A suit, which has been admitted or marked as a liquidated claim or as a commercial suit, may be directed to be treated as an ordinary suit, by the order of a Judge made upon the application of any party by summons in Chambers, or by the Court at the trial either on the application of a party or of the Court's own motion, and upon such terms as to costs as the Judge or the Court shall think fit.

Direction to treat liquidated claim or commercial suit as ordinary suit.
[Cf. C. 304 and 278.]
Costs.

6. There shall also be kept in the Registrar's office for Court No. 1, three lists of defended suits ripe for hearing, to be called—

Prospective lists.
[New.]

Prospective List A—for commercial suits ;

„ „ B—for liquidated claims ;

„ „ C—for other suits ;

and for Court No. 2, a Prospective List of suits other than commercial suits and liquidated claims to be called Prospective List D.

7. The attorney for any party or any party acting in person may, by requisition in writing to the Registrar—

Entering suits in Prospective Lists.

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§§ 7—11.**

by requisition.

[*New.*]

Provido as to time.

[*New.*]

trar, have a suit, other than a special suit, standing in the General Cause List, entered in its proper Prospective List, on the ground that it is ready to be heard and shall, at the same time, give notice to the opposite party or parties of such transfer :

Provided that, where a written statement has been called for, no such requisition shall be made until, in the case of commercial suits or suits for liquidated claims the expiry of one week, and in other suits six weeks, after the filing or the expiry of the time or extended time fixed or prescribed for the filing of the written statements of the defendants appearing.

Suit on entry to be placed at bottom of list.

Where a suit is entered in any of the Prospective Lists, it shall, unless otherwise ordered by the Court or a Judge, be placed at the bottom of such list.

“ Special suit.” See Rule 1 (6) and Rule 2, clauses (b) and (c).

Removal of suits from Prospective Lists by consent or order.
[*New.*]

8. Except as provided in rules 16 and 17, a suit standing in any of the Prospective Lists may be removed therefrom, (a) upon requisition to the Registrar signed by all parties to the suit who have appeared, provided that the Registrar considers the requisition reasonable, or (b) by order to be obtained on application by summons in Chambers to the Registrar. The Registrar, in dealing with such application, may make such order as to costs or otherwise as he may think fit.

Requisitions to be sent before 2 P.M.
[*New.*]

9. No requisition under this Chapter will be received, unless sent in to the Registrar before 2 P.M.

Publication of Prospective Lists.
[*New.*]

10. The Prospective Lists or parts thereof shall be published every Saturday, or oftener when necessary.

Removal of suits from Prospective Lists on account of death, stay, postponement, etc.
[*New.*]

11. Where in any suit standing in any of the Prospective Lists a party dies, or where, except as provided in rule 13, the suit is stayed or postponed or ordered not to be taken before a certain date, the Registrar shall, on receipt by him of information in writing to that effect, cause the suit to be removed from such list, and notice thereof shall be given to the other parties by the party giving the information.

12. Where a suit has been removed from any of the Prospective Lists, it shall not, unless otherwise ordered by the Court or a Judge, be replaced therein without a further requisition under rule 7.

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rr. 12-17.
—
Suit removed from Prospective List not to be replaced without further requisition.
[New.]

13. Where a day is specially fixed for the hearing of a suit, such suit shall be entered in the proper Prospective List, if not already standing therein, and a note shall be made in such list to the effect that the same will be taken on the day fixed, and such suit shall, unless otherwise specially ordered, be set down in the Peremptory List of defended suits for the day fixed for the hearing thereof, next after any part-heard suit or proceeding in such list.

Suit fixed for hearing on a specified day.
[New.]
[Cf. C. 292.]
Its position in the Peremptory Defended List.

14. Any suit in any of the Prospective Lists may be marked as a short cause, and set down on the top of the Peremptory List of defended suits of the Court to which it has been assigned, subject to any part-heard or specially fixed case, where the parties agree and counsel on each side certify that the trial will not, in their judgment, occupy more than an hour.

Marking suit as a short cause.
[New.]
Its position in the Peremptory Defended List.

15. Where any suit, standing in the General Cause List or in any of the Prospective Lists, is settled, and the parties require only an order for taxation of their costs, it may, by requisition to the Registrar, be set down in the Peremptory List of undefended suits of the Court to which it has been assigned with a note against it—"Settled."

Settled suits may be placed in the Peremptory Undefended List for order for taxation.
[New.]

16. Where it is desired to postpone a suit which is about to be set down in the Peremptory List of defended suits for hearing, application for postponement of the hearing may be made to the Registrar, on requisition in writing signed by all the parties who have appeared. Such requisition shall be submitted to the Judge to whose Court the suit has been assigned, and such order shall be made thereon as to the Judge may seem fit.

Postponement, by consent, of suits about to be placed in the Peremptory List.
[New.]

17. Where by reason of inability to obtain the consent of such parties, any party to a suit or matter, who

Postponement of such suits where

**Ch. X.
rr. 17-21.**

consent can-
not be ob-
tained.
[New.]

Proviso.

Postpone-
ment with-
out notice
under rule 17
only granted
if good
cause shown.
[New.]

Suits for the
Peremptory
Defended
Lists shall
be taken
from the
Prospective
Lists.
No case to be
omitted from
the Peremp-
tory List.

[New.]
[Cf. C. 288.]

Where only
one Court
sits, one
Peremptory
List to be
prepared.
What suits
to be entered
in such list.
[New.]
[Cf. C. 306.]

Where two
Courts sit,
supply of
suits for
Court No. 1.
For Court

cannot apply under rule 16, intends, on the same being called on, to apply for a postponement, notice shall be given to the Registrar of such intention not later than 4 P.M. on the day preceding that on which the suit or matter is likely to be set down in the Peremptory List of defended suits for hearing, and on that officer being satisfied that every endeavour has been made to obtain the consent of the other party or parties, he shall, when setting down such suit or matter in the Peremptory List of defended suits for hearing, add the remark "Application for postponement": Provided that the parties must be ready to proceed in the event of the postponement being refused.

18. An application for the postponement of a suit or matter in the Peremptory List of defended suits for hearing, without such prior notice as aforesaid, will not be granted as a matter of course, though all parties consent, unless good and sufficient reasons be shown.

19. From the Prospective Lists shall be taken, in turn, suits required for the Peremptory Lists of defended suits for each of the Courts, and except as otherwise provided by these rules, no suit or proceeding shall, unless otherwise ordered, be omitted from the Peremptory List in which it ought to be placed.

20. Where only one Court shall sit in the exercise of Original Civil Jurisdiction, one Peremptory List of defended suits shall be prepared for every working day, and unless otherwise ordered, it shall be supplied with the necessary number of defended suits,—first from the Prospective List A; next, where necessary, from the Prospective List B, and also, where necessary, from the Prospective Lists C and D alternately and irrespective of the Court to which such suits were assigned.

21. Where two such Courts shall sit concurrently, unless otherwise ordered, Court No. 1 shall be supplied with the necessary number of defended suits,—first from the Prospective List A; next, where neces-

sary, from the Prospective List B; and also, where necessary, from the Prospective List C: and Court No. 2 shall be supplied with the necessary number of defended suits from the Prospective List D.

Ed. X.
 Cr. 21—22.
 No. 2.
 [New.]
 [Cl. C. 305.]

22. Where more than two such Courts shall sit concurrently, unless otherwise ordered, the additional Court or Courts shall be supplied with the necessary number of defended suits from the Prospective Lists C and D alternately.

Where more than two Courts sit, supply of suits for such Court or Courts.
 [New.]

23. Unless otherwise ordered, every Peremptory List of defended suits shall contain for each day not less than 12 and not more than 20 cases.

Number of cases to be entered in every Peremptory Defended List.
 [New.]
 [Cl. C. 253.]

24. Besides the Peremptory List of defended suits, three other Peremptory Lists—namely, the "Peremptory List of Undefended Suits," the "Peremptory List of Motions," and the "Special Peremptory List"—shall be prepared, unless otherwise ordered, for Court No. 1 and Court No. 2, on the day or days to be fixed by such Courts as motion days.

Three other Peremptory Lists besides Peremptory Defended List, for motion days.
 [New.]
 [Cl. C. 291.]

25. (a) Where a sole defendant has or all the defendants being *sui juris* have failed to enter appearance, (b) or where in cases under O. XXXVII of the Code has or have failed to obtain leave to defend or a direction under Chapter XII, rule 6, has been given, or where an order has been made for the transfer of the suit to the undefended list, the suit shall, unless otherwise ordered, be set down in the Peremptory List of undefended suits for the Court to which it has been assigned, in case (a) on the first motion day after the expiry of the time for entering appearance, and in case (b) on the first motion day, as the case may be, after the date of the direction or the filing of the order and the expiry of the time or the non-compliance with the terms of the order.

Setting down suits on the Peremptory Undefended List.
 [New.]
 [Cl. C. 292.]
 [Cl. C. 210.]

Where and when to be set down.

See Chapter IX, Rules 3 and 4.

26. A suit may also be set down in the Peremptory List of undefended suits for a consent decree, on the *fiat* of a Judge or officer to the petition for consent decree.

Setting down suits for consent decree.
 [New.]

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rr. 27—29.

What suits
not to be set
down on the
Peremptory
Undefended
List.

[New.]

[Of. C. 211.]

Undefended
suits may be
kept out of
the Peremp-
tory Undefen-
ded List by
requisition.

[New.]

Setting down
rules and
motions.

[New.]

[Of. C. 284.]

Suits and
matters
which are to
be placed in
the Special
Peremptory
List, and
time for
same.

[New.]

[Of. C. 294.]

27. No suit in which a sole defendant or any of two or more defendants is an infant, or person of unsound mind, shall be set down in the Peremptory List of undefended suits.

28. An undefended suit or proceeding, not in the Peremptory List of undefended suits, may be kept out of such list for any specified period, on the requisition in writing of the plaintiff's attorney, or of the plaintiff, if acting in person, where such requisition is signed by a Judge.

29. Subject to the provisions contained in Chapter XX all rules *nisi* and notices of motions shall, unless otherwise ordered, be set down in the Peremptory List of motions of the Court before which they are returnable, on the day mentioned in such rule or notice.

30. Except as otherwise provided by these rules, the following suits and matters shall be placed in the Special Peremptory Lists for the Courts to which they are assigned, at the times hereunder mentioned :—

(a) For settlement of issues, on the day to be fixed by the Court.

(b) Suits in which a case has been stated under paragraph 11 of the second schedule of the Code, or section 90 and Order XXXVI of the Code, or which stand for judgment upon award, on the day fixed by the notice issued in such cases.

(c) Suits which stand for confirmation or further consideration upon the report of an officer or other Referee, and testamentary and intestate matters for argument on caveat where grounds in support of the caveat have been filed, on the requisition in writing of the attorney for any party or any party acting in person, of which notice in writing shall be given by the party applying to the other party or parties.

(d) Suits under Chapter XIII, on the returnable date of the originating summons.

- (e) All other proceedings, applications and matters required to be set down in a list before the Court, and not hereinbefore specially provided for, on the day fixed for taking the same.

31. Unless otherwise ordered, a commission to examine witnesses issued in a suit or proceeding shall, until the return or the expiration of the time for the return thereof, operate as a stay of such suit or proceeding.

Commission to examine witnesses—to operate as a stay.
[C. 285.]

32. No suit or proceeding, the hearing of which is stayed (a) by an injunction, or (b) until the performance of some act, or (c) by reason of a commission to examine witnesses having been issued, shall be set down in a Peremptory List of defended or undefended suits until after the dissolution of such injunction, or the performance of such act, or the return or expiration of the time for the return of such commission, unless in cases (a) or (b) otherwise ordered by a Judge, or in case (c) otherwise ordered by a Judge or consented to by the parties.

Suits stayed by injunction, etc., when to be set down in a Peremptory List.

33. A suit or proceeding ordered to be placed in a Peremptory List out of its turn, or any adjourned suit or proceeding, shall, unless otherwise ordered, be set down at the bottom of such Peremptory List.

Suits out of turn or adjourned suits to be placed at the bottom of Peremptory List.
[C. Cal. 289.]

34. The Court may, at all times for good cause, transfer a suit from one list to another.

Transfer from one list to another.
[C. 212.]
[C. C. 276.]

35. Petitions in Company matters, when set down for hearing in Court, shall, unless otherwise ordered, be set down at the head of the Peremptory List of defended suits of the Court taking commercial suits, subject only to part-heard suits, short causes, and any matters which the Judge may have directed to have precedence of them.

Setting down petitions in Company matters.
[C. B. 23.]

36. Suits and proceedings, in which no step has been taken for a year for their prosecution, or which have not appeared in the Prospective List within six months from the date of institution, may be placed

Disposal of suits for want of prosecution.
[New.]

th. X.
rr. 36—41.

before a Judge in Chambers, on notice to the parties or their attorneys, to be dismissed for default unless good cause is shown to the contrary, or be otherwise dealt with as the Judge may think proper.

Two lists of
appeals.
[C. 295.]

37. There shall also be kept in the Registrar's office two lists of appeals, one headed "List of Appeals to the High Court," the other headed "List of Appeals to the Privy Council."

List of
appeals to
the High
Court: what
is to be en-
tered there.
[C. 296.]

38. Every appeal from the Original Side of the Court, and every reference from the Calcutta Court of Small Causes, shall be entered in the list of appeals to the High Court.

Publication
of such list.
[New.]
[Cf. C. 297.]

39. Upon intimation being received by the Registrar that a Bench is to be formed for the hearing of appeals from the Original Side, the list of such appeals shall be published three times a week until the sitting of such Bench, when a Peremptory List shall be prepared for each day in which shall be entered, first, appeals from the Original Side in which paper books have been filed, or in which the time for filing paper books has expired, and next, references from the Calcutta Court of Small Causes in which the usual notice has been given to, or waived by the parties.

Appeals not
inserted
under the
last rule
when may be
added to the
Peremptory
List.
[Cf. C. 298.]

40. Unless otherwise ordered, such appeals from the Original Side as were not inserted in the Peremptory List of appeals under the last preceding rule, shall, when ready for hearing either by the expiration of the time for filing paper books, or the removal of any restriction to the hearing thereof or otherwise, be added to the cases on such Peremptory List, at any time during the sitting of the Appellate Court for the hearing of appeals from the Original Side.

List of
appeals to
the Privy
Council:
what is to be
entered
there and
when.
Progress to
be noted
in such list.
[Cal. 299.]

41. Every appeal to the Privy Council from a decision of the High Court in respect of a case on its Original Side shall, on the admission thereof, be entered in the list of appeals to the Privy Council. In such list shall be noted each stage of progress towards and up to transmission of the record to England, as also the date on which the case is finally disposed of.

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r. 42.

42. The rules in this Chapter shall not apply to Admiralty suits *in rem*, in so far as they are inconsistent with the rules relating to such suits.

See Admiralty Rules, Appendix, *post*, p. 303.

This Chapter
when inappli-
cable to
Admiralty
suits.
[New.]

CHAPTER XI.

DISCOVERY AND INSPECTION.

Our old Rules 289 to 291 and 293 to 299 a to g have been omitted, as they are sufficiently covered by other rules or by O. XI of the Code of 1908, which we will now follow. That order of the Code has practically adopted the whole of the English rules (O. 31, R. S. C.) as to discovery and inspection, except the provisions as to security for costs and rr. 22 and 23 of the R. S. C., O. 31, which latter have been inserted in this Chapter as Rules 8 and 4.

In Bombay they have adopted the English rules as to security for costs also, but, having regard to our more complicated procedure as to paying money into or out of Court, it was considered better not to adopt them here.

Under the old Rules it was provided that a defendant, on entering appearance, might obtain inspection or copies of documents annexed to a Plaint as Exhibits, but, unless otherwise ordered, not of documents referred to and produced with a Plaint (but not annexed thereto as Exhibits) until after filing a Written Statement, if a Written Statement were required, and then only by application on summons in Chambers.

This is contrary to O. XI, r. 15 of the Code, which provides that a party shall be entitled at any time to give notice to the other party to produce for inspection documents referred to in any pleading or affidavit. It was held under the corresponding English rule that a defendant may give notice in respect of a document referred to in the statement of claim and so get inspection thereof, before delivering his defence (*Quilter v. Heatley* (1882), 23 Ch. D. 42). It was also held that the rule applies to exhibits (*Hunter v. Dublin, etc., Ry. Co.* (1891), 28 L. R. Ir. 489 C. A.) (See *Re Hincliffe* (1895), 1 Ch. 117 C. A.)

By O. 7, r. 14 of the Code the plaintiff must produce with his plaint any document upon which he sues, and file the same or a copy thereof.

A defendant may obtain inspection and a copy of any document so filed, under Chapter IV, Rule 9, *ante*, upon entering appearance.

If a copy only is filed, the original being retained by the plaintiff, the defendant can obtain inspection under O. XI, r. 15 of the Code.

Under our old Rule 245 a defendant could not, without special leave, obtain an order for an affidavit of documents from the plaintiff until after filing his Written Statement. O. XI, r. 12 of the Code does not contain those words of limitation, nor does the corresponding English rule, but the decisions show that, as a general rule, neither plaintiff nor defendant will be allowed *discovery* from the opposite party until after the defence has been filed (see cases in note to R. S. C., O. 31, r. 12, *Yearly Practice* (1912), p. 397).

It is further to be noted that under old Rule 245 it has been our practice to combine on the one application, an order for *discovery*, by directing the party to file an affidavit of the relevant documents he has or has had in his possession or power; for *production*, as a rule at the attorney's office of such documents as are in his possession except such as he may by his affidavit object to produce; and for *inspection* thereof, by the applicant his attorney or agent, the latter being given liberty to inspect and to take copies thereof and abstracts or extracts therefrom.

As we are now to follow the Code and English procedure the order will simply direct the filing of the affidavit (see Form No. 4, App. C,

to the Code). Production, for purposes of inspection and copies, will be obtainable under O. 11, r. 15, by giving the notice prescribed in r. 16 (Form No. 7, App. C, to the Code). By r. 17 the party to whom such notice is given is, within 10 days (in the corresponding English rule 2 days in the case of documents set out in an affidavit of documents, 4 days in case of other documents), to give notice of the time and place for inspection, stating the documents (if any) of which he objects to give inspection and the grounds of such objection; and under r. 18, the Court has power, where the party served with notice under r. 15 omits to give notice under r. 17, or, where inspection is objected to or offered elsewhere than at the attorney's office, to make an order for inspection at such place and in such manner as it may think fit.

Attention should also be called to O. 11, r. 14, which gives the Court power at any time during the pendency of the suit to order production by any party upon oath of documents in his possession or power.

In the note to the corresponding English rule in the Yearly Practice for 1912, p. 403, it is stated that in the ordinary course of practice production of documents is procured by giving notice under r. 15 to produce them, if they are named in the pleadings or affidavits, or, if not so named, by getting an affidavit of documents under r. 12 and then giving notice under r. 15 (Quilter v. Heatley, *supra*); and that production under r. 14 is seldom if ever used in practice. Quere, however, whether, having regard to the difference in the time fixed by O. 11, r. 17, of the Code as compared with the corresponding English rule, r. 14 may not, in special cases, be of use here.

The numerous decisions on the English rules are to be found in the Yearly Practice and Annual Practice. See also notes to O. 11 in Woodroffe & Amir Ali's C. P. C.

1. An application for leave to deliver interrogatories under O. XI of the Code shall be made in Chambers, on summons to all parties sought to be interrogated. One copy of each set of the proposed interrogatories shall be served with the summons:

Application for interrogatories. Copy of proposed interrogatories to be served.

Provided that no such application shall ordinarily be made by a defendant, until after he has filed his written statement.

Proviso. (New.)

Our old practice of applying by petition will now be abolished, and we will follow the English procedure of applying on notice (summons in chambers) for leave to deliver interrogatories.

A copy of the proposed interrogatories will be served with the summons, and there should be another copy for the Judge or officer hearing the application to consider and initial. On the hearing, it will be considered whether, in the particular case, interrogatories should be allowed at all, and there is a discretion to refuse leave altogether (Codd v. Delap (1906), W. N. 57, affirmed, *ib.* 78): any offer to deliver particulars or to make admissions or produce documents will be considered. (See O. XI, r. 2, C. P. C.)

* If it is decided that interrogatories at all may be allowed, the particular interrogatories sought to be delivered will then be considered, and the arguments of both sides for and against allowing a particular question will be considered. If an interrogatory is relevant and proper, the fact that the opposite party may have good grounds for declining to answer it is no ground for not allowing it, but it should be left to be dealt with in the answer. (See O. XI, rr. 6 and 7, C. P. C.)

Ch. XI.
rr. 1—5.

The fact that an interrogatory is allowed to be put, does not amount to a decision that it must be answered, but leaves it open to the party interrogated to raise in his answer any proper objection to answer under O. XI, r. 6 (*Peak v. Ray* (1894), 8 Ch. 282 C. A.).

When the order is made the Judge or officer should initial a copy of the interrogatories as allowed by him, and a copy of the interrogatories *as allowed* must under r. 2 of this Chapter be served with the order.

Time for delivering interrogatories.—As a general rule interrogatories will not be allowed until after defence delivered, as, until then, it is not known what are the matters in dispute (*Mercier v. Cotton* (1876), 1 Q. B. D. 442 C. A., plaintiff; *Disney v. Longbourne* (1876), 2 Ch. D. 704, defendant; *In re A Debtor* (1910), 2 K. B. per Vaughan Williams L. J. at p. 63). There is, however, power to allow them at an earlier stage (*Beal v. Pilling* (1878), 38 L. T. 486; and in the Ch. D. a plaintiff is often allowed to deliver interrogatories with his statement of claim (*Harbard v. Monk* (1878), 9 Ch. D. 616).

Leave may be given at any later stage (*London and Provincial Marine Insurance Co. v. Davies* (1877), 5 Ch. D. 775; *Cf. Ellis v. Ambler* (1877), 36 L. T. 410, leave refused); but the application should, at latest, be made reasonable time before the trial is likely to come on. (Yearly Practice (1912), pp. 381, 382.)

Copy of interrogatories allowed to be annexed and served with order.

[*New.*]

Service on attorney sufficient to found application for attachment. But party may show no knowledge.

[*Bom. 142.*]

[*R. S. C.*
O. XXXI,
r. 23.]

Liability of attorney neglecting to notify service of order.

[*B. 143.*]

[*R. S. C.*
O. XXXI,
r. 23.]

Affidavit by person other than party.

[*Cf. C. 249.*]

2. After an order has been made giving liberty to deliver interrogatories, one set of the interrogatories, as allowed, shall be annexed and served with the order upon each party interrogated.

3. Service of an order for interrogatories or discovery or inspection made against any party, on his attorney, shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show, in answer to the application, that he has had no notice or knowledge of the order.

4. An attorney, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay the costs occasioned by his neglect, or such part thereof as the Court, Judge, or Officer may think fit.

5. The Court, Judge, or Officer may, for sufficient reason, allow any affidavit to be made, on behalf of the party from whom discovery, production, or inspection is sought, by any person competent to make the same.

Ch. XI.
n. 6-8.

6. Where any documents are ordered to be deposited in Court, a copy of the order and a schedule of the documents must be left at the time the deposit is made.

Copy of order
and schedule
at time of
deposit of
documents.

[C. 263.]

7. When the purpose for which such documents have been deposited in Court is satisfied, the party by whom they were deposited may, pending the suit, have them delivered out to him, but for that purpose he must obtain an order on summons, or the consent in writing of the other party.

Return of
documents
deposited in
Court.

[C. C. 263.]

8. The forms to be followed under this Chapter are those in Appendix C.⁽¹⁾

Forma.
[New.]

(1) *Post*, p. 450.

Gazeta 7 Indri,
1919, R. I, 1326.

CHAPTER XII.

COMMERCIAL SUITS, ETC.

What are
commercial
suits.

[Cf. C. 301.]
[Cf. B. 181.]

1. Commercial suits include suits arising out of the ordinary transactions of merchants, bankers and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency, and mercantile usages, and debts arising out of such transactions.

This description is not exhaustive. It only *includes* those mentioned. (See Yearly Practice for 1912, p. 32.) The Court has a discretion. (*Barry v. Peruvian Corporation* (1896), 1 Q. B. 208.)

A suit for differences was held not to be a Commercial Cause. (*Ram Gopal v. Rajah Surendro Mohan Tagore* (1897), 1 C. W. N., at p. lxxxii.) Nor a suit against a son for damages for breach of a contract made by a firm of which father and son were partners; with a prayer for administration of the father's estate and for an account (*Henry Birkmyre and others v. Deep Narain Singh* (1901), 5 C. W. N., p. cxxiii.) Nor a suit for dissolution of partnership between two traders. (*Bissumbhur Sikdar v. Jadab Chandra Sikdar* (1902), 6 C. W. N., p. cccviii.)

Plaints in
such suits
to be marked
"Commercial."

[Cf. C. 302.]
[Cf. B. 182.]

2. Where a plaintiff, at the presentation of the plaint, applies that his suit may be dealt with as a commercial suit, the Judge, Registrar or Master, to whom the plaint is presented for admission, may, where satisfied that the suit is a commercial suit, cause the plaint to be marked with the words "Commercial suit" in addition to the usual endorsement.

Decision of
Commercial
Judge may
by consent
be final.

[B. 189.]

3. The parties may, where they so desire, agree in writing to be signed by them or their attorneys, that the judgment or decision of the Commercial Judge shall be final.

Setting down
of commer-
cial suits.

[B. 190.]
[Cf. C. 307.]

4. Commercial suits shall, so far as possible, be set down for hearing before the Judge appointed from time to time by the Chief Justice for that purpose, and shall be heard in priority to all other suits appearing in the Peremptory List of suits on that day, except part-heard suits and other commercial suits on the same list, the hearing of which has been fixed for a prior date.

Summary Suits.

5. Where an order has been made giving leave to the defendant to defend a suit under O. XXXVII of the Code, the affidavit of the defendant shall be taken as his written statement, unless the Judge orders a written statement to be filed, in which case the written statement shall be filed within a week from the date of such order, unless the Judge allow a longer time.

Affidavit of defendant to be written statement unless written statement ordered.

[Nwp.]
[Cf. B. 191.]

6. Where the defendant makes default in filing the order granting leave to defend, or in complying with any conditions which may have been imposed on him, within the time limited in the order, the plaintiff may, on requisition, obtain a direction from the Registrar, to transfer the suit to the Peremptory List of undefended suits, on production of a certificate from the proper officer, showing such default, and the suit shall be entered in such list with a note "Transferred under Chapter XII, r. 6."

On default by defendant, transfer to Peremptory Undefended List by requisition.

[Cf. C. 308A.]
[B. 192.]

This and the preceding rule are new, and for the purpose of preventing the defendant from delaying the suit.

See Chapter X, Rule 25, *ante*, p. 167.

7. An *ex parte* order giving leave to defend may be set aside or varied on summons at the instance of the plaintiff.

Ex parte order may be set aside on summons.

Under the former practice an application for leave to defend was a Court application. It will now be a Chamber application.

[Cf. B. 193.]

Under the Form of Summons, based upon Article 159 of Schedule I of the Limitation Act (IX of 1908), the application for leave to defend is to be obtained within 10 days from service. A longer time may be fixed. (See *Groom v. Wilson* (1878), I. L. R. 3 Cal. 530, and the words "unless otherwise ordered" in Rule 2 of Ch. VIII, *ante*.) See also *Quazi Md. Rohman v. Sarat Chunder Dutt* (1900), 5 C. W. N., p. 250, where it was held that *after* the time had been fixed by the summons the Court had no power to enlarge.

Pauper Suits.

8. The power of the Court to allow a suit to be instituted *in formâ pauperis* includes the power to allow a suit to be proceeded with as a pauper suit, after it has been commenced in the ordinary form.

Leave to proceed, by a plaintiff, as a pauper.

[B. 195.]

The Code does not provide for the cases covered by this and the following rule, but it was held that a Court had power to allow a suit, instituted in the ordinary form, to be continued *in formâ pauperis* (*Thompson v. Calcutta Tramway Co.* (1893), I. L. R. 20 Cal. 319, 320; see also *Nirmull Chandra v. Dayal Nath* (1877), I. L. R. 2 Cal. 130; and

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rr. 9—14.

Revji Patil v. Sakharam (1884), I. L. R. 8 Bom. 615), and also power to allow a defendant to defend (Doorgu Churn v. Nittokally Dassee (1880), I. L. R. 5 Cal. 819).

Leave to
defend or
proceed
by a defend-
ant as a
pauper.

[Cf. B. 196.]

Advocate or
attorney
may be as-
signed to
pauper
suitors.

[Cf. B. 197.]

9. Any person may be allowed to defend or to proceed as a pauper with his defence commenced in the ordinary form, on the terms and conditions contained in O. XXXIII of the Code and under these rules *mutatis mutandis*.

10. Where a person is allowed to sue, defend or proceed as a pauper, the Court or a Judge, or the Registrar or Master, may, where necessary, assign an advocate or attorney, or both, to assist him, and an advocate or attorney so assigned shall not be at liberty to refuse his assistance, unless he satisfies the Court or Judge or the Registrar or Master that he has good reason for refusing.

Cf. R. S. C. O. 16, r. 26. The applicant should, if he can, obtain the consent of a Counsel and Solicitor to act for him (*Moutrie v. Mitchell* (1901), I K. B. 596 C. A.). There is power to assign the Official Solicitor, but this will not be done except under very special circumstances (*ib.*). The Court may and, if the claim is obviously frivolous, will refuse to assign a counsel or solicitor, in which case the person admitted to sue as a pauper is entitled to be heard in person (*Tucker v. Collison* (1886), 16 Q. B. D. 562 C. A.).

Application
by pauper for
leave to be
by petition.

[B. 198.]

11. An application for permission to sue, defend or proceed as a pauper shall be made on petition, setting out, concisely in separate paragraphs, the facts and the relief prayed; such petition shall be presented to the Registrar or Master in Chambers, who shall, on satisfying himself that the provisions of O. XXXIII of the Code have been complied with, and not otherwise, direct that the petition be filed and set down for investigation of pauperism on a day to be fixed for the purpose.

Notice for
investigation.

[Cf. B. 199.]

12. On such petition being filed in the Registrar's office, a notice for investigation of pauperism returnable before the Registrar or Master shall be issued.

Notice.—This should be 10 days' clear notice. (See O. XXXVIII, r. 6, C. P. C.)

Direction for
payment of
Court-fees in
every decree.

[Cf. B. 200.]

13. Every decree in a pauper suit shall contain an order for payment of Court-fees mentioned in O. XXXIII, rr. 10 and 11, of the Code.

See Chapter XXXVI, Rule 55, *post*, p. 370.

Memorandum
of Court-fees
to be sent to

14. In every suit in which a pauper is concerned, the Registrar shall, after the disposal thereof, send to

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rr. 14—17.

Government
Solicitor.

[Cf. R. 201.]

the Solicitor to the Government a memorandum of the Court-fees due and payable by such pauper.

See O. 33, r. 10 of the Code.

Where the amount is recovered the Government solicitor sends same to the Registrar, who thereupon purchases Court-fee stamps for the amount of fees.

15. It shall be the duty of the attorney (if any), who may be assigned to a person allowed to sue, defend or proceed as a pauper, to take care that no notice is served, summons issued, or petition presented without good cause.

Duty of at-
torney in
pauper
matters.

[Cf. R. 202.]

Cf. R. S. C. O. 16, r. 30. The solicitor of an appellant suing in *formd pauperis*, having served notice of appeal on a respondent against whom no relief was asked, the Court of Appeal gave leave to move against the Solicitor for payment by him of the respondent's costs. (*Martinson v. Clowes* (1885), 52 L. T. 706 C. A.)

16. Whilst a person sues, defends or proceeds as a pauper, no person shall take, or agree to take, or seek to obtain from him any fee, profit or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain, any such fee, profit or reward shall be guilty of a contempt of Court :

No fee or
reward pay-
able.

[Cf. R. 203.]

Provided that, notwithstanding anything herein contained, the Court or a Judge shall have power to award costs against the adverse party, or out of the property recovered in the suit, and to direct the payment thereof to the attorney representing the pauper.

Power of
Court as to
costs.

The first para. of this rule is the same as R. S. C. O. 16, r. 27. This does not prevent the Solicitor from recovering the amount of his out of pocket expenses. (*Holmes v. Penney* (1854), 9 Exch. 584.)

By the English rule, O. 16, r. 31, the costs of a successful pauper are to be taxed as in other cases, unless the Court otherwise orders, but this apparently does not cover Court fees (which by R. S. C. O. 16, r. 25, are not payable) nor any remuneration to his solicitor or fees to counsel (*Carson v. Pickersgill & Sons* (1895), 14 Q. B. D. 859 C. A.; *Johnson v. Lindsay* (1892), A. C. 110). (See note to Scott on Costs, 11th Edition, Vol. II, 950.)

The proviso to Rule 16 is from Bombay; see Bombay Rule 203, and see also Chapter XXXVI, Rules 53 and 54, *post* (which are old Calcutta Rules 791 and 792), under the latter of which the Court can by special order allow for counsel's and attorney's fees as against the opposite party.

As to change of attorney in a pauper suit see *Annaldas v. Pittamber Dutt* (1901), 5 C. W. N. cxiii.

17. No suit or proceeding commenced or carried on by a pauper plaintiff or defendant shall be

No compro-
mise without
leave of

rr. 17—18.
Court.
[*C. B. 204.*] compromised or discontinued on any account whatever, without leave first had and obtained from the Judge in Chambers or the Court.

Rules applicable to proceedings other than suits.
18. Rules 8 to 17 shall, *mutatis mutandis*, apply to proceedings in this Court other than suits.

As to pauper appeals see Chapter XXXII, Rule 24, *post*, p. 334.

[*New.*]

CHAPTER XIII.

ORIGINATING SUMMONS.

1. The executors or administrators of a deceased person, or any of them, and the trustees under any instrument or any of them, and any person claiming to be interested in the relief sought as creditor, legatee, heir, or legal representative, or as beneficiary under the trusts of any instrument, or as claiming by transfer, or otherwise, under any such creditor or other person as aforesaid, may take out, as of course, an originating summons, returnable before the Judge sitting in Chambers, for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require (that is to say), the determination without an administration of the estate or trust of any of the following questions or matters :—

Who may
take out
originating
summons
and in re-
spect of what
matters.
[B. 207.]

- (a) any question affecting the rights or interest of the person claiming to be creditor, legatee, heir, or legal representative, or beneficiary;
- (b) the ascertainment of any class of creditors, legatees, legal representatives or others;
- (c) the furnishing of any particular accounts by the executors, administrators, or trustees, and the vouching (where necessary) of such accounts;
- (d) the payment into Court of any moneys in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as such executors, administrators or trustees;
- (f) the approval of any sale, purchase, compromise or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

The rules in this Chapter are new to Calcutta and have been taken practically *en bloc* from the Bombay Rules of 1909. Some of the rules—e.g., Nos. 1, 2, 3, 6, 7, 12 and 17—are based on R. S. C., O. 55, rr. 3, 4, 5,

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r. 1.

5A, 5B, 6 and 7, and I have noted some of the English decisions under those rules in the hope that they may be of use. The procedure following upon the application for the Originating summons differs materially from that in England. (See note to Rule 18.)

Determination of any question.—Only questions that would before the rule have been determined in an administration action are included. The following cases of questions that cannot be determined by summons under this rule are taken from the Yearly Practice for 1913, p. 842.

Questions as to a legal devise (*Re Davies* (1888), 38 Ch. D. 210; but see r. 9, *post*, which is the same as R. S. C., O. 54A); questions affecting persons claiming adversely to the will or deed (except by consent) (*Re Bridge* (1887), 56 L. J. Ch. 779; *Re Royle* (1889), 43 Ch. D. 18, C. A.); questions as to liability of executors to account for income of third party received by their testator (*Herrick v. Cooper* (1899), 1 I. R. 321); questions involving a dispute as to facts (*Nutter v. Holland* (1894), 3 Cr. 410); see also *Re Powers* (1885), 30 Ch. D. 291, C. A., *Re Giles* (1890), 43 Ch. D. 391 (priority between mortgagees), and *Beamish v. Whitney* (1908), 1 I. R. 38; question as to whether there has been a proper declaration of trust of additions to a trust fund (*Re Walter's Trusts*, W. N. (1890), 132); question as to repayment of profit costs paid to solicitor trustee (*Re Thorpe* (1891), 2 Ch. 360); question where plaintiff has been excluded in distribution of estate amongst a class (*Re Warren*, W. N. (1884), 112); question where claim involves setting aside a release (*Re Ellis's Trusts* (1889), 37 W. R. 91; *Re Garnett* (1885), 31 Ch. D. 1). A person who claims under a resulting trust arising on the failure through illegality of the trusts of an instrument is not a *cestui que trust* under a trust of the instrument within the Rule (*In re Amalgamated Society of Railway Servants, Addison v. Pilcher* (1910), 2 Ch. 547). An administration order founded on breach of trust or inquiries pointing to wilful default cannot be made upon an originating summons except by consent (*Re Weall* (1889), 37 W. R. 779; *Dowse v. Gorton* (1891), A. C. 190, 202; *Re Hengler, Frowde v. Hengler*, W. N. (1893), 37) (plaintiffs submitting to account). An action to determine whether a defendant is a trustee of a settlement, and for his discharge, and for the appointment of a new trustee, is rightly brought by writ (*Elworthy v. Harvey* (1888), 60 L. T. 30). Administration of assets already distributed will be refused (*Re Warren*, W. N. (1884), 112; and see *re Garnett* (1885), 31 Ch. D. 1, 12 C. A.; *Re Ellis* (1888), 59 L. T. 924); but see *contra Re Chant, Bird v. Godfrey* (1905), 2 Ch. 225.

(a) **Creditor.**—Where there is no dispute of facts, but the question depends merely on a point of law, the validity of a debt can be decided on a summons. (*Re Powers* (1885), 30 Ch. D. 291 C. A.)

(c) **Furnishing of accounts.**—Beneficiaries are entitled to be furnished by the trustees with particulars of the investments of the trust (*Re Dartnall* (1895), 1 Ch. 474). The Trustees are entitled, on being required to furnish accounts in respect of their trust Estate, to be guaranteed against the necessary expense of so doing. (*Re Bosworth* (1889), 58 L. J. Ch. 432.) Where costs were rendered necessary by the neglect of trustees to account they were ordered to pay same. (*Re Skinner* (1904), 1 Ch. 289.)

(d) **Payment into Court.**—This will not be ordered unless there is an admission that the money is actually in the hands of the Trustee. Where there is no such admission, proceeding should be taken under r. 2. (*Nutter v. Holland* (1894), 3 Ch. 408.)

As to what amounts to an admission see note to Annual Practice (1913), under head "Payment into Court," p. 526.

(e) **In their character.**—The act must be within the scope of the trust. (*Suffolk v. Lawrence* (1884), 32 W. R. 899.) See, however, cases under note "Exercise of powers outside trust instrument," Yearly Practice

(1913), p. 839, where it was held that the Court had jurisdiction but it should be exercised with great caution and is really limited to cases of emergency.

(f) **Approval.**—This does not give the Court power to order a sale. (*Re Robinson* (1886), 31 Ch. D. 247.)

(g) **Costs.**—The Court has jurisdiction to deal with the costs of proceedings under Rule 1 (g) as if an action for administration were pending although all parties interested are not before the Court. (*In re Medland, Eland v. Medland* (1889), 41 Ch. D. 476 C. A.) In that case the person beneficially interested in a moiety was not a party to the summons, but the plaintiff and defendant were 2 of the 3 Trustees of her marriage settlement, which comprised her moiety.

There are three classes of cases under r. 1: (1) applications by Trustees for the construction of an instrument of trust; (2) applications by beneficiaries by reason of difficulty of construction or administration; and (3) applications by beneficiaries making claims adversely to other beneficiaries. In the first two classes the costs of all parties (in a proper case, as between solicitor and client) are directed to be borne by the estate. In the third class the unsuccessful party is ordered to pay the costs. (*Re Buckton* (1907), 2 Ch. 406.) See also *Re Halston* (1912), 1 Ch. 435, where on a summons for construction of a will the costs of a successful respondent were ordered to be paid by the unsuccessful respondent.

For other decisions generally under this rule see notes in Annual and Yearly Practice to O. 55, r. 3.

2. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for—

Order for
ad. adminis-
tr. of estate
or of the

(a) the administration of the estate of the deceased;

[B. 208.]

(b) the administration of the trust.

An originating summons for administration of an intestate's Estate cannot properly be taken out before a grant of letters of administration has been obtained. (*Re Lusk* (1891), 65 L. T. 190.)

Where the Estate is shown to be insolvent the proceedings may be transferred to the Insolvent Court; see section 108 (3) of Act 114 of 1906.

Receiver. A proceeding for administration commenced by originating summons is an action, and an application for the appointment of a Receiver can be made in that action at any time whether before or after the trial or the hearing in chambers which is equivalent to the trial. (*Per North J., Re Francke* (1888), 58 L. T. 305.)

3. The persons to be served with the summons under the last two preceding rules in the first instance shall be the following (that is to say):—

Persons to
be served
with sum-
mons.

A. Where the summons is taken out by an executor or administrator or trustee—

[B. 209.]

(a) for the determination of any question under sub-section (a), (e), (f), or (g) of rule 1, the persons or one of the persons, whose rights or interests are sought to be affected;

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rr. 3-6.

- (b) for the determination of any question under sub-section (b) of rule 1, any member or alleged member of the class;
- (c) for the determination of any question under sub-section (c) of rule 1, any person interested in taking such accounts;
- (d) for the determination of any question under sub-section (d) of rule 1, any person interested in such money;
- (e) for relief under sub-section (a) of rule 2, the residuary legatees or heirs or legal representatives or some of them;
- (f) for relief under sub-section (b) of rule 2, the beneficiaries or some of them;
- (g) where there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators or trustees, the said executors, administrators or trustees.

Vendor or purchaser may take out summons.

[B. 210.]

4. A vendor or purchaser of immoveable property or their representatives respectively may, at any time or times, and from time to time, take out an originating summons returnable before the Judge in Chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract).

This and the next rule are not included in R. S. C., O. 55, but see Vendor and Purchaser Act, 1874, s. 9, and for Form of Summons see D. C. F. Nos. 2289 and 2290.

Persons to be served with such summons.

[B. 211.]

5. The summons, under the last preceding rule, shall be served upon such persons as under the existing practice would be the proper defendants to a suit for the specific performance of the contract, out of which the question to be settled arises.

Mortgagee or mortgagor may take out such summons.

6. Any mortgagee or mortgagor, or any person entitled to or having property subject to a charge, or any person having the right to foreclose or redeem any mortgage, may take out, as of course, an originating

Ch. XIII.
rr. 6—12.

summons, returnable before the Judge in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say, sale, foreclosure, delivery of possession by, or recovery of any deficiency from, the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

The words "or recovery of any deficiency from" were added, having regard to the wording of the Code O. XXXIV, r. 6.

See notes to R. S. C., O. 55, r. 5 (a).

7. The summons shall be served upon such persons as under the Code would be the proper defendants to any suit for the like relief as that specified by the summons.

Persons to be served with such summons.

[New.]

8. Where the existence of the partnership or the right to or the fact of the dissolution thereof is not in dispute, any partner in a firm or his representatives may take out an originating summons returnable before the Judge in Chambers against his partners, or former partners or their representatives (if any), for the purpose of having the partnership dissolved (where it is still subsisting) and for the purpose of taking the accounts of, and winding up, such partnership.

When may a partner take out such summons.

[B. 213.]

This is from the Bombay Rules, and is not in R. S. C., O. 55.

9. Any person claiming to be interested under a will, or other written instrument, may apply in Chambers by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the person interested.

Persons interested under will, etc., may take out such summons.

[B. 214.]

See R. S. C., O. 54A, r. 1, and notes thereunder.

10. The Court or Judge shall not be bound to determine any such question of construction, where in their or his opinion it ought not to be determined on originating summons.

Court not bound to determine question of construction.

[B. 215.]

11. The summons under either of the rules 8 or 9 shall be served upon the persons who would be proper defendants under the existing practice if the same relief were sought in a suit.

Persons to be served with such summons.

[B. 216.]

12. The Judge may, in all cases, direct such other persons to be served with an originating summons as he may think fit.

Service on other persons by direction.

[B. 217.]

Ch. XIII.
rr. 12—15.

In England the practice is to amend the originating summons by adding the new parties as defendants, as, until their names have been added to the record, appearances cannot be entered for them.

Plaint and
warrant alone
to be filed.
[B. 218.]

13. An originating summons shall be in form No. 1 and shall specify the relief sought. The person entitled to apply shall present with it to the Judge in Chambers a plaint without a prayer, setting forth concisely the facts upon which the relief sought by the summons is founded, and the Judge, where satisfied that the facts as alleged are sufficient and the case is a proper one to be dealt with on an originating summons, shall sign the summons. No document other than the warrant to sue and the document sued upon (if any) shall be annexed to the plaint.

Form of Summons.—An originating summons ought to be framed stating questions, and asking categorically the decision of the Court upon them. (Re Harman (1894), 3 Ch. 607.) It is convenient that the summons should state the particular rule or sub-rule under which the application is made.

Form No. 6 is taken from the Bombay Form, which in some respects differs from the English Form. The latter (R. S. C., App. K, No. 1-A) requires the defendant within 8 days after service, *to cause an appearance to be entered for him to the summons.* Under R. S. C., O. 54, r. 4 (c), the parties served are to enter appearance and give notice thereof, and by r. 4 (d), the day and hour for *attendance* under the summons to which appearance has been entered is fixed by a notice under the seal of the Court (see Form 1-F, App. K) which is served on the defendants, who have appeared, at their address for service not less than four clear days before the return day.

Our Form following Bombay Form No. 23 requires the defendant *within eight days after service to attend the sitting Judge in Chambers.* See r. 16, *post*.

In the case of one defendant or of several defendants who can be served on one day there will be no difficulty, but it is difficult to see how the form and Rule 16 can be strictly followed in cases where all the defendants cannot be served on the one day. See note to Rule 16 for suggested procedure to meet this.

O. S. plaint
how to be
marked.
[B. 219.]

14. The plaint where accepted shall be filed and numbered as an ordinary suit, and entered in the register of suits, but after the serial number the letters "O. S." shall be placed to distinguish it from plaints in ordinary suits.

If one Judge only sits in chambers (see Chapter VI, Rule 1, *ante*), O. S. suits will not be "assigned" to a particular Judge as in case of ordinary suits. The summons will be made returnable before the Judge in chambers (see Form). In England they are assigned. See R. S. C., O. 5, r. 9 (b). See also Rule 22, *post*.

Service of
O. S.
[B. 220.]

15. The summons, together with a copy of the plaint, shall be served by the attorney taking out the same; and the summons after service shall be filed in the proceedings, together with an affidavit of service.

(Ch. XIII.
rr. 15—19.

The affidavit of service should be filed in the office as soon as possible and information given to the clerk in charge of the Cause List, as, having regard to Rule 20 of this Chapter and to Rule 5 of Chapter XVI, *post*, the O. S. should be placed on the Peremptory List in chambers on the returnable date.

16. Originating summons shall, in ordinary cases, be made returnable in eight days after service, but the Judge granting a summons may fix such longer period as to him may seem proper. No written statement or affidavit shall, in the first instance, be made in answer to the plaint. Returnable date of O. S. [B. 221.]

In ordinary cases.—Where there is only one defendant or where service can be effected on all the defendants on one date, this rule and the form referred to in Rule 13 will be applicable, but where there are several defendants and it is anticipated that service on them cannot be effected on one date, it is suggested that special direction be taken by the plaintiff for making the summons returnable on a date to be fixed in the summons, and each defendant should be served at least eight days before that date.⁽¹⁾

17. On the hearing of the summons, where the parties thereto do not agree to the correctness of the facts set forth in the plaint, the Judge may order the summons to be supported by such evidence as he may think necessary; and may give such directions as he may think just for the trial of any questions arising thereout. The Judge may make such amendment in the plaint and summons as may seem to him to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties. When O. S. may be supported by evidence. [B. 222.]

18. The Judge hearing an originating summons may, where he thinks fit, adjourn the same into Court for hearing an argument, and where it appears to him that the matters in respect of which relief is sought cannot be disposed of in a summary manner, may refuse to pass any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course; and in such case may make such order as to the costs already incurred as may seem to him to be just. What may be done on hearing originating summons. [B. 223.]

19. Where an originating summons is adjourned into Court, the Judge may, where he thinks the question to be determined is of sufficient importance, order the costs to be taxed on the same scale as in a defended suit. In all other cases, the costs of one advocate will be allowed to the plaintiff, and to each person or set of persons, having divergent interests. When costs of originating summons may be allowed as in a defended suit. [B. 224.]

⁽¹⁾ The words " [or on the

day of

" have

been added to the Form.

Ch. XIII.**rr. 20—24.**

Order made
on originat-
ing sum-
mons to be
drawn up as
decree of
Court.

[B. 225.]

Directions
as to carriage
or execution
of decree.

[B. 226.]

Subsequent
summons
about same
estate.

[B. 227.]

O. II, r. 2,
of the Code
not to apply
to plaints
filed in sup-
port of origi-
nating sum-
mons.

[Bom. 228.]

Form.

[New.]

20. Where the Judge is of opinion that the matter is fit to be dealt with on an originating summons, he may pronounce such judgment as the nature of the case shall require, and any order made by him shall be drawn up by the Registrar as a decree of the Court; provided that where the Judge dismisses the summons under rule 18, it shall be sufficient for him to sign an order to that effect, which shall be filed in the proceedings.

21. The Judge may give any special directions touching the carriage or execution of such decree, or the service thereof upon persons not parties, as he may think fit.

22. Where any summons under rules 1 and 2 has been taken out, every subsequent summons relating to the same estate or trust shall, so far as possible, be heard by the Judge who heard the original summons.

23. Nothing in O. II, r. 2 of the Code shall apply to plaints filed to support an originating summons, or to any proceedings thereunder.

24. The form to which reference is made in this Chapter is in Appendix D.⁽¹⁾

⁽¹⁾ *Post*, p. 452.

CHAPTER XIV.

PROCEEDINGS AT THE HEARING OF SUITS.

1. Upon the hearing of any suit, the evidence of the witnesses shall be taken down in writing by, or in the presence and under the superintendence of, the Judge or one of the Judges, not ordinarily in the form of question and answer, but in that of a narrative, and the notes so taken shall be sufficient for all purposes, and shall form part of the record.

Evidence
how taken.
[B. 232.]

See Chapter IV, Rule 13, p. 135, as to office copies of depositions for purposes of an appeal.

2. The endorsement prescribed by O. XIII, r. 4, of the Code, shall be signed by the clerk in attendance instead of by the Judge.

Endorse-
ment under
O. XIII, r. 4
of the Code.
[B. 235.]

3. Where a suit is heard *ex parte* against any defendant, such defendant may be allowed to cross-examine, in person, the plaintiff's witnesses, and to address the Court; but, unless the Court otherwise specially orders, evidence will not be received on his behalf, nor will he be allowed the assistance of counsel or attorney.

Where heard
ex parte,
defendant
may, in
person, cross-
examine
and address
the Court.
[C. 313.]

4. Upon an application for administration or execution of trusts by a creditor, or beneficiary, under a will, intestacy, or instrument of trust where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing,—

Powers of
Court upon
application
for adminis-
tration or
execution of
trusts.
[B. 243.]

(a) order that the application shall stand over for a certain time, and that the executors, administrators, or trustees, in the meantime, shall render the plaintiff or applicant a proper statement of their accounts, with an intimation that if this is not done, they may be ordered to pay the costs of the proceedings;

(b) and, where necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual order for

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rr. 4—8.

administration, with a proviso that no proceedings are to be taken under such judgment or order without the leave of a Judge.

This is R. S. C., O. 55, r. 10 (a).

(a) **Shall render a proper statement.**—In England the practice of directing accounts to be furnished under this rule is now largely followed. (Re Lockwood, 92 L. T. Jo. 237—and see Re Fish (1893), 2 Ch. 427.)

(b) **To prevent proceedings by other creditors.**—See Re Barrett (1890), 43 Ch. D. 70 and Re Mills, W. N. (1884), 21.

Receiver
under a
decree for
maintenance
charged on
property.
[B. 251.]

5. In a decree for maintenance out of property charged with payment of the allowance, the Court may appoint [subject to such conditions (if any) as it shall think fit] a Receiver thereunder, with directions, in case of default in payment of the maintenance, to take possession of the property and sell the same, and out of the sale-proceeds to pay the allowance for maintenance.

See Hemmingway Dasseer v. Kumode Chunder Dass, 1. L. R. 26 Cal. 441.

Settlement of Issues.

Day for
settling
issues, when
to be
appointed.
[New.]
[Cf. C. 309.]

6. Where after a written statement has been filed by a defendant, it appears that the only questions are questions not of fact but of law, or that it is desirable that any question of law should be decided before the issues of fact, or that any of the issues of fact should be tried before the others, or where it is shown that the settlement of issues would simplify the trial, or expedite the termination, or materially diminish the costs of the suit, the Court may, upon the application of either party, appoint a day for settling the issues, and may for that purpose, where necessary, postpone the day of hearing for final disposal of the suit.

Copy of
issues settled
be submitted
to Court and
upon ap-
proval be
recorded.

[New.]
[Cf. Cal. 311.]

7. Where issues are so settled, a copy of the issues as noted in the Court minute book shall be prepared, and submitted to the Court by the principal officer in attendance, and the same, upon being approved, may be filed.

No formal
decree or
order to be
drawn up.
[C. 311 (encl).]

8. No formal decree or order shall be drawn upon the settlement of issues.

CHAPTER XV.

AFFIDAVITS.

1. Every affidavit shall be intituled in the suit or matter in which it is sworn, but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant, respectively, and that there are other plaintiffs or defendants as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the Taxing Officer; provided, however, that all affidavits proving the service of any process or notice shall set forth the full title of the suit or matter.

Title of aff-
davits.
[*Cf. R. 163.*]
[*Cf. R.*
S. C. O.
XXXVIII,
c. 3.]

Costs of
prolixity.

Full title in
affidavits of
service.

See O. 19 of the Code and judgment of the Appeal Court in suit 770 of 1905, *Padmalabty Dassie v. Russick Lall Dhar*, 30th November 1900, where it was held that the provisions of O. 19, r. 3, must be strictly observed, and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief; and the grounds of his belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief.

See note to O. 19, r. 3, *Woodroffe & Amir Ali's C. P. C.*

2. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be, shall be confined, to a distinct portion of the subject. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Affidavits
how to be
drawn up,
etc.

[*Cf. R. 166.*]
[*R. S. C. O.*
XXXVIII,
r. 7.]

Costs where
rule departed
from.

Written. This would include typed: See General Clauses Act X of 1895, sec. 3 (59).

Shall be drawn in the first person.—An affidavit sworn in the United States made in the third person, where it is the practice so to swear them, was allowed to be filed. (*Blumey v. Blumey* (1902), W. N. 138.)

3. Every affidavit shall state the description and true place of abode of the deponent.

Description
and place of
abode to be
stated.

Where the deponent has an occupation (*i.e.*, profession, trade, business or calling) that occupation should be disclosed; and if he has none, the words "of no occupation" should be added after his address.

[*See.*]
[*Cf. R. 167.*]

The first para. of this rule is the same as R. S. C., O. 38, r. 8, the last paragraph being taken from a R. S. C. Filing Department notice. (See *Yearly Practice for 1913*, p. 543.)

Ch. XV.
rr. 2-5.

From the note to r. 8 in the Annual Practice for 1913, p. 649, it appears that "In practice this rule is generally observed in affidavits made by parties to the action as well as by other persons, notwithstanding *Crocket v. Bishton*, 2 Mad. 446; but the description 'the abovenamed plaintiff' or 'defendant' without giving the address is still accepted as sufficient."

"Solicitor's (or Attorney's) clerk" is not a correct description; the proper form is "Clerk to Messrs.——Solicitors (or attorneys)."

The word "abode" does not necessarily mean the actual residence in all cases. The place of business is usually sufficient. (Yearly Practice for 1918, p. 543.)

Interpreting
and explain-
ing affidavits
by Court
interpreters.
[New.]

4. All affidavits to be made in Calcutta or within 5 miles thereof, which require to be interpreted and explained to the deponent, shall be interpreted and explained by one of the sworn interpreters or translators, of the Court, prior to being sworn. In the event of the deponent not knowing any of the languages known to the Interpreters or Translators, or in the event of the affidavit being sworn outside the limits above mentioned, the affidavit may be interpreted and explained to the deponent by some competent person, who shall make an affidavit that he is thoroughly conversant with English and with the language spoken by the deponent, and that he truly and accurately interpreted and explained the affidavit.

By other
competent
persons.

Affidavits
taken before
authorised
Commissioner.

[New.]
[Cf. C. 34.]
[Cf. B. 165.]
[R. S. C. O.
XXXVIII,
r. 5.]

5. Affidavits for use in any of the jurisdictions of the Court may be taken in Calcutta or within 5 miles thereof before a Commissioner generally or specially authorised by the Chief Justice for the purpose.

Every such Commissioner shall express in the jurat the place where he has taken any affidavit, in the event of the same being taken elsewhere than in the Court House.

See Supreme Court Charter, clauses 28 and 14.

Doubts having been entertained whether the Calcutta Supreme Court had power on its Crown and Plea sides under the Charter to grant a standing Commission to take affidavits, Act XIV of 1848 was passed empowering the Court to issue such Commissions.

That Act, which on the establishment of the High Court was continued by 24 & 25 Vict., c. 104, s. 11, was subsequently repealed by Act X of 1877.

In lieu of the repealed Act, it is provided by the Code of Criminal Procedure, Act V of 1898, s. 539, that "affidavits and affirmations to be used before any High Court, or any officer of such Court, may be sworn and affirmed before such Court, or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorised to take affidavits or affirmations in Scotland." It is also provided by the Code of Civil Procedure, s. 139, that

"in the case of any affidavit under this Code, any Court or Magistrate⁽¹⁾ or any officer or other person whom a High Court may appoint in this behalf, or any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant."

The effect of these provisions is, that the Commissioners appointed thereunder, i.e., under both Acts, have power to take affidavits and affirmations, whether intended to be used in this Court in any of its several jurisdictions, or elsewhere *under the Code*. [B]

See also Presidency Towns Insolvency Act (III of 1909), s. 117.

The Commissions issued authorise the officers appointed to take affidavits "within Calcutta or within 5 miles thereof."

As to acceptance by Courts, of affidavits sworn or affirmed before persons duly authorised to administer oaths and affidavits, see The Oaths Act (X of 1873), s. 4 and s. 82 of the Evidence Act (I of 1872).

In England they accept an affidavit sworn or affirmed before any officer of a High Court or Local Court empowered by such Court to administer oaths. (See O. 38, r. 6, and Table on p. 223B of the Annual Practice for 1918.)

Special Commissions are also issued by this Court to persons in England and elsewhere to take affidavits, and under Act XXXI of 1854, s. 7, to take the acknowledgments of married women.

Application for such an appointment should be by petition or letter to the Registrar, Original Side, stating the place where the applicant is carrying on business, the time during which he has practised as a Solicitor, the nature and extent of his business, and that there is the want of a Commissioner in the locality; certificates of character should also be produced. The petition or letter is placed by the Registrar before the Chief Justice for orders. If the application is granted, a Commission is drawn up by the Registrar and signed by the Chief Justice and sealed with the seal of the Court.

A list of such Commissioners is kept in the Registrar's office.

Fees.—No fee is allowed for taking affidavits or affirmations in the Court House, but fees are allowed to Commissioners and Interpreters for taking same elsewhere. (See Chapter XXXVI, Rule 80, p. 386.)

It has been the practice to apply, on petition, for leave for one of the Commissioners to attend to swear or affirm an affidavit outside the Court House. This expense can be saved. The affidavit can, if necessary, for the purposes of taxation, be produced in the Taxing Office; inspection of the jurat will show the place where it was taken.

6. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat.

Names of
all depon-
ents in the
jurat.

[Cf. B. 168.]
[R. S. C. O.
XXXVIII,
r. 9.]

7. Where the deponent is a *purdanashin* woman, she shall be identified by a person to whom she is known and before whom she appears, and such person shall at foot of the affidavit certify that the deponent was

Identification
of a *purda-
nashin*
woman
deponent.
[New.]

(1) A Political Agent has the powers of a District Magistrate. Macpherson's List of British enactments in Native States, p. 27.

**Ch. XV.
r. 7—11.**

identified by him and sign his name thereto, and shall prove such identification by a separate affidavit.

Marking, etc.,
of exhibits.

[*Cf. B. 177.*]
[*R. S. C. O.*
XXXVIII,
r. 24.]

8. Every exhibit annexed to any affidavit shall be marked with the short title and the number (if any) of the cause or matter, and shall be dated and initialled by the officer before whom the affidavit is sworn.

Affidavits
not to be
filed without
proper en-
dorsement.

[*Cf. B. 169.*]

9. No affidavit shall be filed in the several offices of the Court, unless properly endorsed with the number and title of the suit or matter, the name or names of the deponents, the date on which it is sworn, and by whom or on whose behalf it is filed.

It was held in England that certain affidavits made and sworn in America might be filed though not intituled in the cause or matter (*Salvidge v. Tutton*, 2 L. T. 800; followed in *Blamey v. Blamey*, W. N. (1902) 188), and affidavits erroneously intituled were allowed to be taken off the file and resworn in their proper title without fresh stamps. (*Pearson v. Wilcox*, 10 Hare, App. 85.)

See also Rule 12, *post*.

Striking out
scandalous
matter.

Costs.

[*B. 170.*]
[*R. S. C. O.*
XXXVIII,
r. 11.]

10. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between attorney and client.

Scandalous matter.—A pleading or allegation which is scandalous cannot be struck out if it is necessary or relevant to the issue or one of the issues in the action. (See *Christie v. Christie* (1879), L. R. 8 Ch. 499 C. A.; *Coyle v. Cuming* (1879), 40 L. T. 455; *Cashin v. Craddock* (1876), 3 Ch. D. 376, and other cases collected in *Yearly Practice for 1918*, p. 258.)

Interlinea-
tions, altera-
tions or
erasures how
to be dealt
with.

[*R. S. C. O.*
XXXVIII,
r. 12.]
[*B. 171.*]

11. No affidavit, having in the jurat or body thereof any interlineation, alteration or erasure, shall, without the leave of the Court or a Judge, or in any matter depending before an officer without the leave of such officer, be read, or made use of, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures, appearing at the time of taking the affidavit to be written on the erasure, are re-written and initialled in the margin of the affidavit by the officer taking it. An officer may refuse to take an affidavit where, in his opinion, the interlineations, alterations, or erasures are so numerous as to render it necessary that the affidavit should be re-written.

Circum-
stances under
which officer
may refuse
to take
affidavit.

Where an order is made and it is found in the office that this rule has not been complied with, the office will assume that the leave required by the rule has been given.

12. The Court, Judge or Officer may receive any affidavit, sworn for the purpose of being used in any suit or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Ch. XV.
rr. 12-15.
Affidavits
may be re-
ceived not-
withstanding
defects.
[C. J. B. 172.]
[R. S. C. O.
XXXVIII,
r. 14.]

See note to Rules 2 and 9, ante.

13. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court, Judge or Officer.

Affidavits
filed after
time.
[C. J. B. 172.]
[R. S. C. O.
XXXVIII,
r. 18.]

Where a summons has been adjourned into Court, evidence filed after the time fixed in chambers for filing evidence cannot be used without special leave; where no time had been fixed, evidence filed after the adjournment into Court was admitted. (Re Chiffrelet (1888), 58 L. T. 877.)

14. Except by leave of the Court, Judge or Officer, no order made *ex parte*, founded on any affidavit, shall be of any force, unless the affidavit, on which the application was made, was actually made before the order was applied for, and produced or filed at the time of making the application.

Ex parte
order of
no force un-
less affidavit
is filed before
application
is made.
[C. J. B. 176.]
[R. S. C. O.
XXXVIII,
r. 19.]

15. The word "affidavit" in this Chapter shall include petition and any other document required to be sworn; and the words "swear" and "sworn" shall include "affirm" and "affirmed."

Interpreta-
tion of words.
[R. 180.]

CHAPTER XVI.

JUDGMENTS, DECREES, AND ORDERS.

Judgment
how pro-
nounced and
minuted :
decree or
order in
accordance
therewith.

[*Cf. C. 315.*]
[*B. 240.*]

1. The judgment shall be pronounced in open Court, and a minute thereof made by the principal officer in attendance in Court; and the decree or order shall be drawn up in accordance therewith.

Oral judg-
ment how
taken down.

[*Cf. C. 314.*]
[*B. 241.*]

2. Where judgment is given by the Court or a Judge orally, a note thereof in writing, or in shorthand, shall be taken by the principal officer in attendance. The note so taken shall, unless the Judge shall otherwise direct, be written out fully, and submitted to the Judge for revision. A note so submitted, when revised by the Judge, shall be signed by him and may be filed, as the judgment of the Court, but if returned by the Judge unsigned, it may be filed as the official note of the judgment. After it has been so filed, the parties shall be entitled to obtain office copies in the usual manner.

Revision
thereof.

Official note.

Official note
of judgment
of a Judge
on leave, etc.,
how may be
filed.

[*New.*]

3. The official note of a judgment delivered by a Judge, who has gone on leave or ceased to be a Judge of the Court, after revision by the officer by whom it was taken, or, where such officer is not available, the unrevised note thereof, may be filed with the leave of a Judge, and when the same has been filed, office copies may be obtained in the usual manner.

Judgments
how to be
dated.

[*New.*]

4. Every judgment shall be dated as of the day on which such judgment is pronounced, save that where a party dies after hearing but before judgment, the judgment shall be dated as of the date of the hearing. By special leave of the Court or a Judge, a judgment may be ante-dated or post-dated.

Note of
decree to be
minuted.

[*Cf. C. 315.*]

5. Where a decree is made in Court or in Chambers, a note shall be taken in the minute book by the principal officer in attendance.

6. No decree in a suit shall be passed, unless the suit appears in the Peremptory List of Suits for the day.

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r. 6—11.

No decree unless suit appears in the Peremptory List.
[Cf. B. 242.]

7. A decree by consent may be made in Chambers, provided the suit appears in the Peremptory List of Suits for the day.

Consent decree in Chambers.
[New.]

8. Unless the Court or a Judge shall otherwise direct, a party consenting to a decree or order shall appear before the Court or a Judge, and signify such consent by an attorney, or where he has no attorney, in person, or by a recognised agent.

Consent how signified.
[Cf. C. 332.]

9. Unless otherwise ordered by the Court or a Judge, the decree, where a pauper suit is dismissed, shall direct the plaintiff to pay full costs, with a stay of execution until it is shown that the plaintiff is in a position to pay the costs.

Direction as to costs where pauper suit is dismissed.
[New.]

This rule is based on what has been the practice. (See cases collected at p. 260 (note), *Belchambers' Practice*.)

10. Every decree shall, upon application under rule 27, be drawn up in the office of the Registrar, and be signed by the Registrar or Master and by the Judge, and sealed with the seal of the Court, and shall bear the same date as the judgment in the suit.

Decrees to be drawn up, signed, sealed, and dated.
[Cf. B. 246.]

See note to Rule 1, Chapter VIII, *ante*, p. 151. Decrees will now run in the name of the Sovereign.

Same date as the judgment.—Cf. O. 20, r. 7, of the Code under which the decree is to bear the date when judgment was pronounced.

See Rule 4, *ante*, under which a judgment may by leave be ante-dated or post-dated.

By this rule the decree will bear the same date as the judgment.

11. A decree shall contain the number of the suit, the names and description of the parties, and particulars of the claim as stated in the concise statement, and shall state what parties appeared and how and whether any evidence was taken, and shall specify clearly the relief granted or other determination of the suit; but no issues or the findings thereon shall be inserted unless by special directions of the Judge, nor there shall be any recitals other than such short ones

Contents of decree.
[Cf. C. 31, 324.]
[B. 247.]

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R. 11—15.**

as the Registrar or Master thinks necessary. Money and securities for money shall be expressed at length.

Concise Statement.—See Chapter VII, Rule 1, *ante*, p. 148.

Directions in
decree or
order for
payment,
etc., into
Court.
[C. 321.]

12. Unless the Court or a Judge shall otherwise direct, every decree or order for payment of money or delivery of securities into Court shall direct such money to be paid, or securities to be endorsed and delivered over to the Comptroller General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal (or such other officer or officers as shall, for the time being, have the custody of the funds of suitors), with the privity of the Accountant General of the Court.

See Rule 18 of Chapter XXIV, *post*, p. 247.

Directions in
decree or
order for
payment, etc.,
out of Court.
[C. 322.]

13. Unless the Court or a Judge shall otherwise direct, every decree or order for payment of money or delivery of securities out of Court shall direct such money to be paid or securities to be endorsed and delivered over by the Comptroller General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal (or such other officer or officers as shall, for the time being, have the custody of the fund of suitors) with the privity of the Accountant General of the Court.

See Rule 14 of Chapter XXIV, *post*, p. 248.

Payment to
be ordered to
be made to
parties only.
[C. 330.]

14. Unless otherwise directed, every decree or order for the payment of money shall be drawn up for payment of the money to the party or parties who shall be entitled to receive the same, and not to the parties or their attorneys.

To authorise
sale and sub-
division of
securities.
[C. C. 323.]

15. Every decree or order for the payment of money out of a fund in Court shall, for the purpose of such payment, be so drawn up as in express words to authorise the sale and sub-division of the securities for money belonging to the fund, or of a sufficient portion thereof.

In his note to Rule 323, Mr. Belchambers states that it is no longer necessary that a decree or order should contain this direction, having regard to Rule 667 of the Money Rules, which is Rule 18 of Chapter XXIV, *post*, p. 249. After consideration it was decided to retain both rules. Although liberty is given by the latter rule it is convenient to have the direction in the decree or order.

16. Unless the Court or a Judge shall otherwise direct, every decree in a suit or proceeding for the sale of mortgaged property shall contain a direction, that if the money to arise by such sale shall not be sufficient for the payment in full of the amount of principal, interest and costs payable under the decree, the plaintiff shall be at liberty to apply for a decree for the amount of the balance if legally recoverable.

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n. 16—18.

Decree for sale of mortgaged property: direction for personal decrees.

[Cf. Cal. 327, 468.]

See O. 34, r. 6 of the Code. Where the mortgagor is dead the decree for the deficiency would be against his legal representatives out of his estate.

17. Where a mortgagee in a suit for the sale of mortgaged property obtains leave to bid for and purchase the property, and, if declared the purchaser, to set off the purchase-money *pro tanto* against the amount payable under the decree for principal, interest and costs, the decree shall, unless the Court or a Judge shall otherwise direct, provide (1) that the applicant do, except in suits in which the principal does not exceed Rs. 1,000, pay the Registrar's commission; (2) that if the purchase-money shall exceed the amount payable under the decree, the applicant do pay the amount of the excess into Court to the credit of the suit, to be held there subject to the further order of the Court.

Provisions in the decree where leave to bid is obtained.

[Cf. C. 328.]

18. Unless the Court or a Judge shall otherwise direct, every decree for partition shall provide—

Provisions in a partition decree

[Cal. 329.]

- (1) for the payment, where necessary, of money for the purpose of equalising the value of the shares; Owalty.
- (2) for the execution by the parties of mutual transfers; Mutual transfers.
- (3) for payment by the parties respectively of their own costs of suit, up to and including the decree; Costs up to decree.
- (4) for payment by the parties respectively of the costs of issuing and executing the commission of partition and confirming the Commissioner's return, in proportion to the value of their respective shares. Subsequent costs.

Where one of the parties to a partition suit bears all the costs of the proceedings subsequent to decree and the other parties make default in payment to him of their respective shares of the costs, he must first

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17. 18-22.

obtain an order against them for payment, which order can be executed if the costs are not paid. (See Belchambers' Practice, p. 361, and Brojolall Sen v. Mohendra Nath Sen, I. L. R. XVIII Cal., p. 199.) The old practice was to obtain the order for payment by rule nisi which was made absolute. See now Chapter XX, Rule 3, *post*, p. 226.

The costs of suit and of the partition may (in the final decree) be charged on the respective shares allotted by the Commissioner's return. (See Khettarpal Sritirutno v. Khelat Kristo Bhattacharjee, I. L. R. 21 Cal., at p. 909.) The charge in that case was made under sec. 222 of the old Code. Under sec. 35 (1) of the present Code the Court has power to determine "by whom and out of what property" costs are to be paid and "to give all necessary directions for the purposes aforesaid."

Where liberty to apply implied.

[B. 352.]

Order made on Chamber application of counsel to be minuted.

[Cf. Cal. 316.]

Other Chamber orders to be endorsed on the application and be signed.

[Cf. Cal. 317.]

Drawing and signing of Court's or Judge's orders.

[Cf. B. 245.]
 [C. 515.]

Drawing and signing of Registrar's or Master's orders. Proviso.

[Cf. B. 245.]
 [Cf. C. 515F.]

Orders to be sealed and filed.

[Cf. B. 245.]

Direction as to costs in an order permitting withdrawal of

19. In every decree or order that is not final, liberty to apply shall be implied.

20. Where an order is made in Chambers on an application in which counsel appears, a note shall be taken in the minute book by the principal officer in attendance.

21. Where an order is made in Chambers on an application in which counsel does not appear, a note of its purport shall be endorsed on the application, and signed by the Judge or officer by whom the order is made.

22. Every order of the Court or a Judge shall, upon application under rule 27, be drawn up in the office of the Registrar, and be signed by the Registrar or Master.

23. Every order made by the Registrar or Master shall, upon application under rule 27, be drawn up in the office of the Registrar, and be signed by the officer making the same: Provided that if by reason of the absence of the officer who made the order or from other cause it cannot be signed by him, it may, in a case of urgency, be signed by the other of such officers.

24. Every order after being signed shall be sealed and filed forthwith.

25. In the case of an order permitting the withdrawal of a suit, appeal, or matter, unless the parties otherwise agree, or the Court or Judge otherwise orders, there shall be inserted in the order a direction

that the plaintiff is to pay to every defendant or respondent, who has filed a written statement or a memorandum of appearance, his costs of the suit, appeal or matter when taxed.

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rr. 25—29.
—
suit, etc.
[C. C. 515C.]

26. Where a suit is allowed to be withdrawn with liberty to bring a fresh suit in respect of the same subject matter, unless the Court or a Judge shall otherwise direct, the order shall be drawn up so as to make the payment of the costs of the suit a condition precedent to the plaintiff bringing a fresh suit.

Payment of costs condition precedent where suit is withdrawn with liberty to bring a fresh suit.

[C. 334.]
[B. 263.]

27. No decree or order shall be drawn up until applied for by a party. The application therefor shall be made by the requisition in writing of the party in whose favour the decree or on whose application the order was made, or, in default of his applying within four days from the date of the decree or order, by any party within one month thereafter.

Drawing up of decree or order to be applied for by requisition
[C. R. S. C. O. LXII, rr. 5 and 6.]

In case any decree or order is not applied for within the last mentioned time, the Registrar may decline to draw up the same without the leave of the Court or a Judge.

Consequence of not so applying.

This rule follows the English practice of bespeaking judgments and orders and, as to orders, has been in force since November 1912 under Rule 114 of the Taxation Rules of that date which rule has now been omitted from the Taxation Rules. It was found that numerous orders were drawn up and allowed to remain in the office without being filed.

Now a requisition will be put in under this rule upon which, in the case of orders, a stamp of Rs. 7 for drawing and filing the order is paid.

28. In cases of doubt or difficulty with regard to a decree or order made by the Court or a Judge, the Registrar or Master may, before issuing the draft, submit the same to the Court or Judge who passed the decree or order.

Draft to be circulated. In cases of doubt, etc., draft may be submitted to Court or Judge.
[New.]

29. Where the draft of any decree or order requires to be settled in the presence of the parties, the Registrar or Master shall, by notice in writing, appoint a time for settling the same: and the parties must attend such appointment, and produce to the officer their briefs and such other documents as may be neces-

Settling draft of decree or order on notice.
[C. B. 287, 288.]
[C. 335.]

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RS. 29—33.

Service of
such notice
on attorney.

sary to enable him to settle the draft. The notice will be sent from the Registrar's office to the attorneys of the parties, with a receipt book in which shall be obtained the signature of the attorney or clerk with whom the notice shall be left.

Service on
parties ap-
pearing in
person.
Proof of such
service.

[*Cf. B. 259.*]

The notice shall be served on the parties who have appeared in person, by the party who has the carriage of the decree or order. When so served, the original notice, with a memorandum endorsed thereon of the service of a copy thereof, signed by the party by whom such service was made, must be delivered to the officer, who may, if not satisfied that service has been duly made, require such service to be verified by affidavit.

Consequence
of failure to
attend ap-
pointment
for settling.

[*C. 336.*]
[*B. 260.*]

30. Where any party fails to attend the officer's appointment for settling the draft of a decree or order, or fails to produce his briefs or any documents called for by the officer, the officer may proceed to settle such draft in his absence, or without the production of the briefs or documents aforesaid, or may require the matter to be mentioned to the Court.

On adjourn-
ment, par-
ties to attend
without
further
notice.

[*Cf. C. 337.*]

31. The officer may adjourn any appointment for settling the draft of any decree or order to such time as he may think fit, and the parties shall be bound to attend the adjournment without further notice.

Speaking to
the minutes
of a decree
or order.

[*Cf. C. 338.*]
[*B. 263.*]

32. Where any party is dissatisfied with any decree or order as settled by the officer, and intends to mention the matter to the Court, the officer, if informed of such intention, shall not proceed to complete the decree or order without allowing such party sufficient time to apply to the Court. The application must be made by motion, on notice to the parties who appeared at the hearing.

Variation
made by
Court in the
draft as
settled by
officer.

[*Cf. C. 339.*]
[*B. 264.*]

33. Where a variation is made by the Court in the draft settled by the officer, such variation shall be embodied in the decree or order, and, except where the costs of the application are ordered to be paid, no fresh order need be drawn up.

On speaking to the Minutes, the question as to whether or not the order should have been made cannot be gone into. (*Nilkanto Ganguly v. Ramkissen Daga*, VI C. W. N. cccxiv.)

See also note to Chapter VI, Rule 7, *ante*, p. 142.

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s. 34.

34. Where notice to settle a decree or order is given in consequence of the neglect of any party to return his copy of the decree or order within a reasonable time, and it shall appear, on the settlement of the decree or order that such party has no objection to the decree or order as drawn, his attorney's costs of appearing on the settlement will not be allowed on taxation.

Consequence
of neglect to
return draft
in time.

[C. C. 340.]

[B. 263.]

CHAPTER XVII.

EXECUTION OF DECREES AND ORDERS.

Application
for
transmission.

[New.]
[Cf. C. 369.]
[Cf. B. 276.]

Transmission
how to be
made.

[Cf. C. 368.]

1. Applications under section 39 of the Code, to transmit a decree to another Court for execution, shall be made on petition, verified by affidavit, clearly stating the particulars mentioned in clause (a), (b), (c) or (d) of that section, and shall ordinarily be accompanied by a certified copy of the decree and of any previous order for the execution of the decree; and upon the order being made, the Registrar shall, by registered post, transmit such certified copy together with the other documents mentioned in O. XXI, r. 6 (b) and (c) of the Code, or, where no order for execution has been made, a certificate to that effect.

On petition.—Our practice for some years has been to apply, for transmission, on a tabular statement, as if such an application were one for execution and where more than one year had elapsed since the decree or last application or where the application was against the legal representatives of the deceased judgment-debtor, notice was issued, sometimes from this Court, or sometimes (e.g., in cases where the judgment-debtors or the legal representatives resided within the jurisdiction of the Court to which the decree was required to be sent) the decree would be transmitted with intimation that no notice had issued from this Court. In an unreported case (Suit 285 of 1896 Joy Chand Lal v. Chutterput Singh, order dated 2nd September 1907) it was held that notice must issue from this Court. That decision was, however, dissented from, and the old practice restored with the concurrence of the Judge who passed the abovementioned order.

It was further held that an application to transmit a decree to another Court was not an application "for execution" under section 248, but was an application under section 228 of the old Code (section 39 of the present Code). (*Raja Sreenath Roy v. Ramesh Chandra Acharya Chowdhuri* (1908), 12 C. W. N. 897.)

O. 21, r. 22 of the new Code, corresponding to section 248 of the old Code, provides that on an application for execution the Court executing the decree shall issue notice.

As therefore section 39 does not require notice to go on an application to transmit, and as, under the Code, notice must be issued by the executing Court on an application for execution, it would be useless waste of time and money for this Court to issue notice as we used to do; nor is it necessary that the application should be on tabular statement.

Combination
of application
under section
50 or O. XXI,
r. 16 of the
Code with
application

2. An application under section 50 or O. XXI, r. 16 of the Code, may be combined with an application under the last rule, and where an order is made on such application, a copy of the order shall be transmitted with the papers.

Under sec. 50 of the Code it is for the Court which passed the decree to be satisfied as to who are the legal representatives of the deceased judgment-debtor. Therefore where it is desired to transmit the decree for execution against the legal representatives, sufficient facts should be stated in the petition to justify the grant of such leave.

Similarly where application is made by a transferee of a decree who desires to transmit it to another Court, sufficient facts must be stated in the petition to show that the applicant is entitled to apply.

Where there has been a transfer by assignment, notice will, under O. 21, r. 16 of the Code, be given on the application, as at present.

3. In the certificate of non-satisfaction required by O. XXI, r. 6 of the Code shall be specified the costs taxed under the decree to be executed, where the same have been taxed, and the amount of costs of application for transmission of copy of the decree as in the table below, and where an order has been made under section 50, or O. XXI, r. 16 of the Code, the amount of any costs allowed under such order.

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Sec. 50.
to transmit.
[New.]
[O. C. 270.]
[B. 277.]

What costs to be specified in the certificate of non-satisfaction.
[C. Cal. 269.]

TABLE.

Items.	Attorney's fees.	Court fees.
	Rs.	
Petition including filing, etc.	8	Rs. 7. and Rs. 2 for each exhibit, if any, and charge for copy decree.
Making application	10	
Receiving certificate, paying postage, etc.	4	Necessary Court fees besides postage.
Any necessary affidavit	5	Rs. 2.

4. Where a decree is sent to another Court for execution, stay of execution will be entered in the proceedings in this Court, unless the Judge, Registrar or Master shall, on such terms as he thinks fit, otherwise direct.

Stay of execution to be entered after transmission.
[B. 278.]

5. Where a person against whom execution is sought has property in two or more districts, the Judge, Registrar or Master may, on being satisfied of its necessity, cause a copy of the decree obtained against

Contemporaneous transmission to two or more

districts.
[C. 371.]
[B. 279.]

Certificate
of non-
satisfaction
and letters to
be sent in
such cases.

such person, to be transmitted for execution in some or all of such districts contemporaneously. In the certificate of non-satisfaction, to be sent therewith to the Court of each of such districts, it shall be stated to what other Courts a copy of the decree has been sent for execution. At the same time, a letter shall be sent to the Judge of one of such Courts, requesting him to attach and sell the property in his district (hereinafter mentioned as district A), or a sufficient portion thereof, and certify the result to this Court: and with such letter shall be sent a copy of the letter sent to the Judge of each of the other Courts. A letter shall also be sent to the Judge of each of the other Courts, requesting him to attach the property in his district, but not to sell the same until requested by this Court to do so.

Where in-
sufficient
amount
realized in
first
district.

[C. 372.]
[B. 230.]

6. Where the amount realized in execution in district A shall not be sufficient to satisfy the decree, a certificate stating the result of the sale shall be sent to the Judge of another of such Courts, with a letter requesting him to sell the property under attachment in his district (hereinafter mentioned as district B), or a sufficient portion thereof, and certify the result to this Court.

Practice.—Application is made by petition in chambers stating the result of proceedings in Court A, and asking that certificate and letter be sent to Court B.

Also in
second or
succeeding
district.

[C. 373.]
[B. 281.]

7. Where the amount realized in execution in district B shall not be sufficient to satisfy the balance payable under the decree, the proceeding indicated in the last preceding rule shall be followed, in respect of each of the other districts successively, until the balance payable under the decree is satisfied, or until the property attached in all of such districts has been sold.

When suffi-
cient amount
realized in
execution.

[C. 374.]
[B. 282.]

8. Where the amount realized in execution in district A, or district B, or any other district, except the last, shall be sufficient to satisfy the decree, a certificate, that such is the case, shall be sent to the Court of each district in which property shall, at the time, be under attachment in execution of the decree.

When
Registrar
may return
copy decree

9. Where a copy of a decree of another Court is transmitted to this Court for execution, the Registrar may return the same, if the requirements of section 50

or of O. XXI, r. 6 or 16 of the Code do not appear to have been fully complied with.

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Sec. 16.

from
another
Court.
[New.]
[Cf. Cal. 353.]
[B. 283.]

10. The application for execution, whether the provisions of O. XXI, r. 22 of the Code apply or not, shall be in Form No. 1, and shall be on a sheet of durable paper of good quality foolscap size, and shall, in addition to the particulars mentioned in O. XXI, r. 11 (2) of the Code, contain the following :—

Application
for
execution.
Form.

[Cf. Cal. 347.]
[B. 284.]

Contents.

- (a) (Under column 6.)—The date and nature of any writ issued before or after judgment.
- (b) (By way of schedule.)—The description of the property and the interest of the judgment-debtor therein as required by O. XXI, r. 13 of the Code.
- (c) A statement of the estimated value of the property sought to be attached, or, if such property is incumbered, the value thereof after providing for the satisfaction of the incumbrances.

In all cases, the application shall be accompanied by a duly certified copy of the decree.

Copy decree
to
accompany
in all cases.

(c).—See proviso to O. XXI, r. 17 of the Code.

Copy decree to accompany.—This is new and taken from Bombay. Hitherto the Decree department has required production of the original decree from the Record department.

11. All notices under section 145, or under O. XXI, r. 2, 16, 22, 34 (2), or 37 of the Code shall be issued by the Registrar or Master; notices under section 145, and under O. XXI, rr. 2, 34 (2) and 37, being made returnable before the Judge in Chambers, and notices under O. XXI, rr. 16 and 22, being made returnable before the Registrar or Master. Every such notice shall be returnable on a certain day to be therein mentioned, and shall be served at least eight clear days before such date, unless the Registrar or Master shall otherwise order. (Forms Nos. 2, 3, 4, 5, 6 and 7.)

Issue,
service
and return
of notices.
[Cf. B. 290.]
[Cf. O. 348.]

Section 145 relates to Enforcement of liability by surety.

O. XXI, r. 2. Application by judgment-debtor against decree-holder to show cause why payment or adjustment should not be recorded.

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O. XXI, r. 16. Application for execution by transferee by assignment.

O. XXI, r. 22. Application for execution (a) more than a year after date of decree or (b) against legal representative of judgment-debtor.

O. XXI, r. 84 (2). Application to enforce decree for execution of a document.

O. XXI, r. 87. Application for arrest.

Order for notice and execution on same tabular statement. Costs of second tabular statement.
[C]. C. 349.]

12. The order for the issue of a notice, and the subsequent order after service of notice, shall be made on the same tabular statement, or petition, as the case may be, and the costs of a second tabular statement or petition shall not be allowed, unless otherwise ordered.

A petition would be only in a case under O. XXI, r. 2. The other cases mentioned in Rule 11 would be on Tabular Statement.

Application for execution of decree for delivery of immoveable property.
[C]. C. 355.]

13. In every application for the execution of a decree for the delivery of immoveable property under O. XXI, r. 35 or 36 of the Code, it shall be stated whether the property is in the possession or occupancy of the judgment-debtor, or any other person bound by the decree to vacate the property, or whether it is in the occupancy of a tenant, or any other person entitled to occupy the same and not bound by the decree to relinquish such occupancy.

Application for possession of immoveable property sold in execution.
[C]. C. 356.]

14. In every application under O. XXI, r. 95 or 96 of the Code, for possession of immoveable property sold in execution of a decree, it shall be stated whether the property is in the occupancy of the judgment-debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, or whether it is in the occupancy of a tenant, or other person entitled to occupy the same. The petition on which the application is made shall be accompanied by a certificate of the Registrar, that a certificate of sale under O. XXI, r. 94 of the Code, has been granted to and in the name of the person who, at the time of sale, was declared to be the purchaser.

To be accompanied by Registrar's certificate.

The last para. is new, but in accordance with practice; and see O. 21, rr. 95, 96.

15. Every warrant for the arrest of any person, in execution of a decree or order, shall, in addition to the amount due and payable under the decree for

principal, interest and costs, specify a sum for the costs of the execution as shown in the table below.*

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rs. 11—13.

to be specified.

[Cal. 351.]

[B. 292.]

16. With every such warrant there shall be deposited with the Sheriff a sum of Re. 1 for intermediate subsistence of the judgment-debtor pursuant to O. XXI, r. 39 (1).

Deposit for intermediate subsistence.

[Cf. B. 373.]

New, but in accordance with practice.

17. Every warrant for attachment of property shall, in addition to the amount due and payable under the decree for principal, interest and costs, specify a sum for costs of execution as shown in the table below.*

Warrant of attachment. Costs of execution to be specified.

This is new, and necessary owing to Rule 20, which is also new. See note to that rule.

[Cf. B. 293.]

18. Every warrant of arrest or attachment shall be returnable, by the Sheriff, to the office of the Registrar, immediately after the service thereof, or where he has been unable to serve the same, not later than one month from the date of the delivery of the warrant to him, unless such time be extended by an order to be obtained *ex parte* in Chambers. The Sheriff shall certify, by endorsement on the warrant, the date and manner in which it has been executed, or why it has not been executed

Return of warrants. [New.]

Certificate as to execution.

*TABLE.

Items.	Attorney's fees.	Court fees.
Tabular statement including filing . . .	Ra. 11	Ra. 7, and Ra. 2 for each exhibit, if any.
Making application . . .	10	
Receiving warrant and sealing same . . .	2	Ra. 7.
Lodging same with Sheriff . . .	1	
Attending on or writing to client requesting him to point out the person to be arrested or the property to be attached . . .	3	
Attending, obtaining and handing money to client (to be allowed in the first warrant but not in any subsequent warrant, except where there has been part payment) . . .	5	
Any necessary affidavit . . .	5	Ra. 2.

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nr. 19—20.

Person
arrested in
execution
when
entitled to
discharge.
[C]. C. 359.]

Release of
property
attached in
execution.
[New.]

19. A person arrested under a warrant, issued in execution of a decree for the payment of money, shall be entitled to his discharge from such arrest, on payment or tender to the decree-holder or his attorney, or to the Sheriff, of the amount directed to be levied by such writ, and upon payment to the Sheriff of his fees, poundage and charges.

20. Where property is attached under a warrant, issued in execution of a decree for the payment of money, the judgment-debtor shall be entitled to the release of the property from such attachment, on payment or tender to the decree-holder or his attorney, or to the Sheriff, of the amount directed to be levied by such writ, and upon payment to the Sheriff of his fees, poundage and charges.

Under our old Rules 362 and 363 where a judgment-debtor was arrested and paid to the Sheriff the full amount due, he was entitled to his release and the Sheriff applied the money deposited with him in satisfaction of the decree, i.e., he paid the decree-holder.

Having regard, however, to the wording of section 73 of the present Code, which has considerably altered section 295 of the old Code, it has become necessary to change our old rules.

The words in section 295 of the old Code were "Where assets are realized by sale or otherwise in execution of a decree," and it was held (*Purshotam Dass Tribhoram Dass v. Mahant Surajbharthi Hariorthi* (1882), I. L. R. 6 Bom., p. 588) that monies paid under duress of arrest were not assets realized by sale or otherwise under that section. In the judgment, stress was laid upon the position of section 295, it being one of a number of sections under the heading as to sale and delivery of property, and, it was said, the section must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized." The words of section 73 of the New Code, however, are "where assets are held by a Court," and this section is under one of the sub-headings of Part II of the Code, the principal heading being "Execution," so the reasoning in the Bombay case based upon the position of section 295 will not now apply.

That payment to the Sheriff is payment to the Court, so as to bring assets held by him within section 73, seems clear. It has been specifically so held in this Court (*Gopal Chunder Sadkhan v. S.M. Chandan Moni Dassee*, Execution case 49 of 1908, Harington J., Minute book of 24th January 1911), and that it is so considered in Bombay appears from *Garnishee Rule 306* which requires the money to be paid into Court, the Form (No. 58) under that rule calling on the Garnishee to pay to the Sheriff.

In this connection see also O. XXI, r. 1 of the Code.

Money paid to the Sheriff therefore cannot be paid direct by him to the decree-holder; old Rule 363 has therefore been deleted, and it has been provided that the Sheriff is to pay all monies realized by him, less his fees, poundage and charges, to the Accountant-General of the Court (Rule 24).

The decree-holder must then proceed under Rules 37, *et seq. post*.

Where, however, the judgment-debtor settles with the decree-holder direct and pays the latter or his attorney, he is entitled to his discharge, or to the release of his property. (See Rules 19 to 22.)

As to Sheriff's poundage see Chapter XXXVI, Rule 77 (22), *post*, p. 383.

Our Forms of Warrants have been altered providing for the Sheriff paying monies *realized by him* to the Accountant-General. (See Rule 24.)

After the warrant has been returned and filed an office copy can be obtained, to be taken into the Accountant-General's Office with the Sheriff's memo. as to the amount realized.

Our present forms of attachment of immoveable property have also been altered. Hitherto they have been addressed to the judgment-debtor. In Bombay they are addressed to the Sheriff as in the case of attachment of moveables or of arrest. We will now follow Bombay in this respect, and having regard to Rule 20 provision has been made in the forms for the attachment being "until the further order of this Court or until release under Chapter XVII, Rule 20."

Cf., Bombay Rules 375 and 376.

21. A written order, under the hand of the attorney of the decree-holder, or of the decree-holder himself where he has no attorney, shall justify the Sheriff in discharging the judgment-debtor, or releasing his property; provided, where the order for discharge or release is under the hand of the attorney of the decree-holder, the latter shall not have given written notice to the contrary, and also provided there are no other detainers against the judgment-debtor or warrants of attachment against the property. Order of attorney or decree-holder when sufficient for discharge. [*Cf. C. 360.*]

22. Nothing shall justify an attorney in giving an order for the discharge of a person in custody under any warrant of arrest, or for the release of any property under attachment, without the consent in writing of his client. Order for discharge by attorney; consent of client necessary. [*Cf. C. 361.*]

23. The payment to the Sheriff of the monies, specified in rules 15 and 16 or rule 17 together with his fees, poundage and charges, shall justify him in discharging the judgment-debtor or releasing the property, provided there are no other detainers against the judgment-debtor or warrants of attachment against the property. Release of person or property attached under warrant. [*Cf. C. 359 and 362.*] [*B. 276.*]

24. The Sheriff shall receive all monies tendered to him under any warrant of arrest or attachment, and upon receipt of such monies, or on realization of monies by sale or otherwise from the property of the judgment-debtor, he shall forthwith certify to the Court the amount and date of such receipt or realization, and shall pay the amount, less his fees, poundage and charges, to the Comptroller General of Accounts for the time being of the Government of India, and the Payment by Sheriff of money received or realized in execution by him. [*Cf. C. 363 and 364.*] [*B. 360.*]

**Ch. XVII.
rr. 24—28.**

Secretary and Treasurer for the time being of the Bank of Bengal (or such other officer or officers as shall for the time being have the custody of the funds of suitors) with the privity of the Accountant-General of the Court to be placed by them to the credit of the suit, subject to the further order of the Court.

**Note of
order for
committal
to be
endorsed on
warrant.
[Oj. C. 364.]**

**Separate
warrant for
committal.**

25. Where a judgment-debtor is committed to the Civil prison in execution of a decree and his subsistence allowance fixed, a note of the purport of the order shall be endorsed on the warrant of arrest by the principal officer in attendance on the Judge, and authenticated by his signature. Upon production in the Registrar's office of the warrant with such endorsement, a separate warrant shall be issued, for the commitment of the judgment-debtor, in which the amount and rate of the subsistence allowance fixed by the Judge shall be specified.

**Notice of
sale at
foot of
warrant for
attachment
of property.
[C. 350.]**

26. A memorandum shall be added at the foot of every warrant for the attachment of property to the following effect:—"Notice is hereby given to all persons concerned that proceedings will be taken, without further notice, for the sale of the property to be attached hereunder, and to have the money, to arise by such sale, applied in payment of the costs of execution and of the amount payable to the decree-holder under the decree made in this suit and dated the day of "

Without further notice.—See, however, Rule 29, *post*, where application for sale is made after one year.

**Application
for Receiver
in execution
of decree.
B. 291.]**

27. An application for the execution of a decree, by the appointment of a Receiver under O. XL, r. 1 of the Code, to realize or otherwise deal with property under attachment, shall be made to the Judge in Chambers.

**Execution of
document
or endorse-
ment of
negotiable
instrument
by Registrar.
[Oj. Cal. 344.]**

28. The Acts directed to be done by the Court under O. XXI, rr. 34 (5) and 80 of the Code, shall, unless otherwise ordered by the Court or a Judge, be done by the Registrar. The execution or endorsement by the Registrar shall be in the following form:—

**Form of
endorsement
or execution.**

"A. B. by C. D., Registrar of His Majesty's High Court of Judicature at Fort William in Bengal in its

Original Civil Jurisdiction (under order, dated
and made in suit No. of
wherein is plaintiff and
is defendant)."

Ch. XVII.
rr. 28—32.

29. An application for an order for the sale of property under attachment in execution of a decree shall be by petition *ex parte* in Chambers, signed and verified as prescribed in O. XXI, r. 66 (3) of the Code, and accompanied by the statement mentioned in that sub-clause, and by a certificate of the Sheriff stating that such property has been attached. Where the application is made after the expiry of one year from the date of attachment, notice in Form No. 8 shall issue. The costs of and occasioned by the issue of such notice shall, unless otherwise directed, be paid by the applicant.

Mode of applying for sale in execution.
(New.)
[C. C. 381.]
Notice where application is made one year after attachment.
Costs of such notice.

The last portion of this rule as to notice follows our practice. Where leave to bid is asked the application should be on summons. (See note to Rule 32.)

30. Unless otherwise ordered, the sale of property attached in execution of a decree, within the local limits of the jurisdiction of this Court, shall be conducted by the Sheriff of Calcutta, or his Deputy, or other person authorised by the Sheriff for that purpose.

Sale after attachment to be conducted by Sheriff.
[C. 367.]

31. The order for sale will be drawn up with directions as to the proclamation to be made under the provisions of O. XXI, r. 66 of the Code, and with a direction that the money, to arise by such sale, be paid into Court to the credit of the suit, subject to the further order of the Court.

Order for sale.
[C. 382.]
[Cf. 388.]

32. Unless otherwise directed, every order obtained by a decree-holder, other than a mortgagee, for leave to bid and purchase the property to be sold in execution of a decree, and if declared the purchaser, to set off the purchase-money, *pro tanto*, against the amount payable under the decree for principal, interest and costs, shall direct (1) that such set off shall only be allowed upon production to the Sheriff of a certificate from the Registrar, dated subsequent to the sale, to the effect that no application for execution against the same judgment-debtor made to this Court, except by the decree-holder, is subsisting: (2) that the applicant do pay the Sheriff's fees, poundage and charges: (3)

Order for leave to bid when obtained by a decree-holder other than a mortgagee.
[Cf. C. 329.]

**Ch. XVII.
r. 33—35.**

that, if the purchase-money shall exceed the amount payable under the decree, the applicant do pay the amount of the excess to the Sheriff.

This is in accordance with our practice. Having regard to section 73 of the Code (old section 295) it was held that there can be no set-off where there are any prior applications for execution against the same judgment-debtor. (Suit 410 of 1889, *Nogendra Nath Chatterjee v. Mutty Lal Soor*, 1st March 1893, Trevelyan, J.)

Application for leave to bid.—See O. 21, r. 72 of the Code. The application should be on summons (suit 356 of 1891, *K. P. Bose v. B. M. Sircar*, 1st March 1893, Trevelyan, J.), which was always been followed.

Matters to
be specified in
Proclamation
be ascer-
tained by the
Registrar.

[*Cf. C. 387.*]

Powers of
Registrar
for that
purpose.

33. Where any property is ordered to be sold by public auction in execution of a decree, the ascertainment of the matters required by O. XXI, r. 66 of the Code, to be specified in the proclamation issuing under that section, shall be done by the Registrar, or such other officer as shall be named in the order of sale; and the Registrar or such other officer, as the case may be, shall for that purpose have power to summon any person whom he may think necessary, and examine him in respect of any such matter, and require him to produce any document in his possession or power relating thereto.

Settlement,
approval
and
publication
of Proclama-
tion.

[*Cf. C. 389.*]

34. Unless otherwise ordered, every proclamation of an intended sale shall be settled and approved by the Registrar, or such other officer as may be named in the order for sale, and shall be published in the *Calcutta Gazette* and such other public papers, and as often, as such officer shall direct having regard to the nature and value of the property to be sold.

Search for
incum-
brances and
affidavit.

[*Cf. C. 390,
391.*]

35. On the settlement of such proclamation, there shall be filed before the officer an affidavit, showing that a search for incumbrances has been made in the office of the Registrar of Assurances, with the result of such search. Provided that where a search has already been made, and in the opinion of the officer a sufficient affidavit has been filed with the petition for a sale order, any further search or affidavit may be dispensed with.

See O. 21, r. 66 of the Code. By cl. (3) of that rule the statement to be annexed to the petition for a sale order is to contain the matters required to be specified in the proclamation "so far as they are known to or can be ascertained by the person" verifying the petition.

This rule will ensure that a search for incumbrances is made before the proclamation is settled.

Ch. XVII.
rr. 36—38.

36. Where assets realised in execution are held by the Court, the Registrar shall, at the request of the judgment-creditor at whose instance the realization was made, certify what persons have, within 12 years prior to the receipt of such assets (the date whereof shall be furnished by the Sheriff or the Accountant-General as the case may be), applied to the Court for execution of decrees for money against the same judgment-debtor whose applications are subsisting and have not been satisfied. Should the decree-holder at whose instance the realization was made neglect or refuse to apply for the certificate, any other person entitled to share in the assets shall be at liberty to apply for such certificate.

Certificate of Registrar as to other prior applications for execution. [Cf. B. 299.]

Under our present practice the search in the Registrar's office for other applications against the same judgment-debtor goes back to the year 1878, when the Execution book was first started. It is often found that applications mentioned in such certificate are barred, or are against persons of the same name as the judgment-debtor. As this search entails considerable trouble and delay it has now been curtailed to 12 years prior to realization.

By Bombay Rule 290 the period is only 12 months, but, on consideration of the wording of section 73, it was considered that we should not by rule try to so limit the period.

So long as an application is one which can be enforced it is entitled to share.

Cutting the period for search down to 12 years (the period fixed by the Limitation Act for execution of our decrees) will expedite matters considerably and, to further assist decree-holders, provision has been made in Rule 43, *post* (following O. 21, r. 57 of the Code), for applications, which are not proceeded with for 12 months, being set down before a Judge for dismissal.

37. Where the Registrar shall certify that no person has, within 12 years prior to the receipt of such assets, applied to the Court for execution of the decree for money against the judgment-debtor, whose application is subsisting and has not been satisfied, the decree-holder may at once apply for payment to him of the amount realized, or so much thereof as may be sufficient to satisfy his decree. The application may, unless otherwise ordered, be made *ex parte* to the Judge in Chambers by petition verified by affidavit.

Application *ex parte*, where no such other applications. [Cf. C. 383.]

38. Where the Registrar shall certify that more persons than one have, within 12 years prior to the receipt of such assets, applied to the Court for execution of decrees for money against the same judgment-debtor whose applications are subsisting and have not been satisfied, the decree-holder, at whose instance the

Application on summons where there are such other applications. [Cf. C. 384.]

Ch. XVII.
rr. 38—40.

Application
for rateable
distribution
on summons.

realization was made, or, where such decree-holder neglects or refuses to do so, any other person entitled to share in the assets, may apply for an order for rateable distribution of such assets among all such persons. The application shall be made on summons to the judgment-debtor and to the persons mentioned in the certificates referred to in rule 39, calling upon them, if they claim to share in such assets, to attend before the Judge in Chambers on the day therein named in support of their claims.

Application
for payment
or rateable
distribution
to be
supported by
three
certificates :
(a) of the
Accountant-
General ;
(b) of the
Registrar ;
[*Of. Cal. 385.*]

39. The application mentioned in each of the last two preceding rules shall be supported by—

(a) a certificate of the Accountant-General, stating what money has been received by him and when, and also stating all orders or notices received by him affecting the same;

(b) a certificate of the Registrar, stating what persons have within 12 years prior to the receipt of the assets applied to the Court for execution of decrees for money against the same judgment-debtor, whose applications are subsisting and have not been satisfied, and when such applications were made;

(c) of the
Sheriff.

(c) a certificate of the Sheriff, stating what money has been received by him and when, and that at the date of such certificate he has no other assets belonging to the judgment-debtor, and also stating all orders or notices received by him affecting the same, and where there has been a sale of property, whether at the time of the sale such property, or any other property belonging to the judgment-debtor, was affected by any attachment before judgment.

Order on
such
application.
[*Cj. B. 301.*]

40. Upon the day named in the summons, the Judge, upon proof of the due service thereof, shall proceed to deal with such claims, and make such order as he deems fit, or he may refer it to an officer to enquire and report what persons are entitled to share, and in what proportions, upon a rateable distribution of the assets held by the Court.

Reference
for rateable
distribution.

The report of the officer on this enquiry is not brought before the Court as in the case of other references, unless a party desires to take exceptions to it. The form of order is for payment by the Accountant-General of the balance of the fund, after payment of the plaintiff's costs, rateably to the several persons who shall by the report be found entitled to a distributive share in the proportions to be indicated in the report.

41. Where any portion of the pay or salary of any judgment-debtor is monthly or at other intervals paid into Court, in execution of a decree, the execution-creditor shall not be entitled to obtain a certificate of the Accountant-General after each of such payments. The issuing of a certificate in such a case shall be in the discretion of the Accountant-General, who shall have regard to the amount due to the execution-creditor, and to other creditors, if any, who are entitled to rateable distribution.

Issuing of Accountant-General's certificate discretionary where pay or salary is periodically paid into Court.

[Cf. B. 302.]

The object of this rule is to save the expense of too many references for rateable distribution.

42. Where the Court or a Judge shall think fit to refer it to the Registrar, or other officer of the Court, to make an enquiry under O. XXI, r. 41 of the Code, the Registrar, or other officer as the case may be, shall, for that purpose, have power to summon any person whom he may think necessary, and examine him in respect of the matter of such enquiry, and require him to produce any document in his possession or power relating thereto.

Officer's power when making enquiry under O. XXI, r. 41 of the Code.

[Cf. Cal. 344 A.]

O. XXI, r. 41 of the Code, i.e., examination of the judgment-debtor and others as to his property.

43. Where, after an application for execution of a decree, no step is taken by the decree-holder to proceed with the execution for a period of 12 months, the matter shall be set down before a Judge in Chambers, on notice to the applicant and the judgment-debtor against whom the proceedings are being taken, and the Judge may dismiss any application then pending, or, for any sufficient reason, may adjourn the proceedings to a future date. Upon the dismissal of such application, any attachment made or proceedings taken thereunder shall cease, and in the case of a decree transmitted to this Court for execution, a certificate under section 41 of the Code shall be sent to the Court which passed the decree.

Application for execution not proceeded with for 12 months to be set down before a Judge.

[New.]

**Ch. XVII.
rr. 44—46.**

Provisions
relating to
decrees apply
to orders.

[New.]

Rules
applicable
to arrest
and attach-
ment before
judgment.

[New.]

Forms.

[New.]

44. The provisions of this chapter relating to decrees shall apply to orders with such variations as the circumstances may require.

45. Rules 15 to 25 shall severally apply *mutatis mutandis* to warrants of arrest and attachment before judgment.

46. The forms to which reference is made in this chapter are in Appendix E.⁽¹⁾

(¹) *Post*, p. 453.

CHAPTER XVIII.

GARNISHEE ORDERS.

The rules in this Chapter are taken from Bombay Rules 306—314 (*Cf.* R. S. C., O. 45) but we have omitted from r. 1 (Bombay 306), the reference to r. 52 of O. XXI of the Code, it being considered that the Garnishee procedure is not properly applicable where the property to be attached is in the custody of a Court or Public Officer. Our present practice is retained in respect of such property.

The new Garnishee procedure will do away with our old cumbersome procedure of giving the third person *the liberty* to pay into Court, and, in default of his so doing, the appointment of a Receiver with power to sue for the debt. The Garnishee will be able, if he admits the debt, to pay to the Sheriff, as to which see note to r. 20 of Chapter XVII, *ante*, p. 210; or he may be ordered to pay in under Rule 2. Such a payment will be a valid discharge. (See Rule 6.)

1. The Registrar or Master may, in the case of any debt (not secured by a negotiable instrument), any moveable property not in the possession of the judgment-debtor, or any negotiable instrument, which has been attached under O. XXI, r. 46 or 51 of the Code, upon the application of the attaching creditor, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or to deliver or account for such moveable property, or liable on such negotiable instrument to such judgment-debtor, calling upon him to appear before the Judge in Chambers and show cause why he should not pay or deliver into Court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the costs of execution. (Form No. 9.)

Procedure where debt or moveable property not in possession of judgment-debtor attached. [R. 306.]

Cf. R. S. C., O. 45, r. 1, which provides that, where it is shown that any other person is indebted to the judgment-debtor, the Court or a Judge, may order "all debts owing or accruing" from such third person (the Garnishee) to the judgment-debtor to be attached, and may call upon the Garnishee to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor.

It was held that the former expression "all debts owing or accruing" is not restricted by the latter expression "the debt due," and that there was power therefore to make an order against the Garnishee for payment of the debts as and when they became payable, instead of making a fresh order as each payment fell due. The remedies provided by the rules are only applicable to present debts, but may be used to take effect when payment of the debt becomes due. (*Tapp v. Jones* (1875), L. R. 10 Q. B. at p. 598. See also *In re Cowan's Estate* (1880), 14 Ch. D., p. 638, in which latter case it was also held that "debt" includes equitable as well as legal debts.)

Ch. XVIII.
rr. 1-2.

It is essential, however, that the debt should be in existence *debitum in presenti*. If that is the case, it does not matter that there is no debt payable in *presenti*, so long as it is *debitum in presenti* but *solvendum in futuro*. There must be something which the law recognises as a debt. (*Webb v. Stenton* (1883), 11 Q. B. D. at p. 522.)

Salary accruing but not due is not a debt. (*Hall v. Pritchett* (1877), 3 Q. B. D. 215; *Mapleson v. Sears* (1911), 105 L. T. 639. In that case the defendant, a music-hall artiste, had agreed to give a week's performances at a salary of £180 a week. It was contended that on the agreement, though the salary was payable weekly, it was contemplated that the artiste should be taken to have earned his salary at the end of each performance, and the Master so decided; but on appeal it was held that there was no debt due which was liable to attachment until the expiration of the week's engagement.)

For other instances of what may or may not be attached, see Yearly and Annual Practice, notes to O. 45, r. 1.

Application.—By petition in first instance (see Chap. VI, r. 3, p. 141) to Registrar or Master. The notice issued on the application is returnable before the Judge. (Rule 1.)

The form of the Notice (see p. 458) requires the Garnishee to pay to the Sheriff the sum attached or so much thereof as may be sufficient to satisfy the decree and the costs of execution, or to appear in chambers and show cause to the contrary, and by Rule 2, if no cause is shown, the Judge may order the Garnishee to comply with the notice, i.e., pay to the Sheriff, who will under Rule 24 of Chap. XVII, p. 211, pay same to the Accountant-General.

Cf. the English practice, where the order absolute directs payment to the judgment-creditor. (See Forms at pp. 2060-2061, Yearly Practice for 1913.)

In England the garnishee order nisi is, unless otherwise ordered, directed to both the Garnishee and the Judgment-debtor, but there, the attachment of the debt is also made by that order nisi (see Form No. 39, App. K, R. S. C., Yearly Practice for 1913, p. 2060). Here, the debt will have been attached under O. 21, r. 46 of the Code which will have been served on the judgment-debtor; the notice therefore would presumably go only to the Garnishee.

Procedure
where
garnishee
does not
forthwith
pay amount,
etc.

[B. 307.]

2. Where the garnishee does not forthwith pay or deliver into Court the amount due from or the property deliverable by him to the judgment-debtor, or so much as may be sufficient to satisfy the decree and the costs of execution, and does not dispute his liability to pay such debt or deliver such moveable property, or where he does not appear in answer to the notice, then the Judge may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.

Procedure
where
garnishee
disputes
his liability.
[B. 308.]

3. Where the garnishee disputes his liability, the Judge, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order upon the notice as shall be just.

C/. R. S. S., O. 45, r. 4.

May order an issue to be tried.—Where the Garnishee establishes a *prima facie* case an issue is usually ordered. (*Wilson v. Dundas*, W. N. (1875), 282.) Where there is any reasonable doubt, the issue should be tried. (*Wise v. Birkenshaw* (1860), 29 L. J. Exch. 240.)

Where an action is pending between the judgment-debtor and the Garnishee as to the alleged debt, Garnishee proceedings will not be allowed, unless they are colluding. (*Richardson v. Greaves* (1861), 10 W. R. 45.)

Where an issue is ordered the question is whether, at the time of service of the order on the Garnishee, he was indebted to the judgment-debtor. The judgment-debtor is not a party to the issue. (*Levene v. Malon* (1907), 51 Sol. J. 532.)

4. Where in any proceedings under this chapter it is suggested, or appears to the Judge to be probable, that the debt or property attached or sought to be attached belongs to some third person, or that any third person has a lien or charge upon, or an interest in it, the Judge may order such third person to appear and state the nature of his claim (if any) upon such debt or property, and prove the same, if necessary.

Procedure where debt or property belongs to a third person. [B. 309.]

C/. R. S. C., O. 45, r. 5.

For form of order see Chitty's Forms, 12th Edition, p. 468; 14th Edition, p. 526.

5. After hearing such third person, and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the Judge may pass such order as is hereinbefore provided, or make such other order as he shall think fit, upon such terms, in all cases with respect to the lien, charge or interest (if any) of such third or other person as to such Judge shall seem just and reasonable.

Order to be made on hearing such person. [B. 310.]

C/. R. S. C., O. 45, r. 6.

6. Payment or delivery made by, or execution levied upon, the garnishee under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear as aforesaid, for the amount paid, delivered or levied, although such order or the judgment may be set aside or reversed.

Payment or delivery under order to be a valid discharge. [B. 311.]

C/. R. S. C., O. 45, r. 7.

7. Debts owing from a firm carrying on business within the ordinary original civil jurisdiction of this Court may be attached under this chapter, although

Attachment of debts owing from a firm.

CH. XVIII.

rr. 7—10.

[B. 312.]

one or more members of such firm may be resident out of the jurisdiction : provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

**Costs to be
in discretion
of Judge.**

B. 313.]

8. The costs of any application under this chapter and of any proceedings arising therefrom or incidental thereto, and of any order made thereon, shall be in the discretion of the Judge.

**Orders
appealable.**

[B. 314.]

9. Orders made under this chapter shall be appealable as other orders made in execution.

Form.

[New.]

10. The form to which reference is made in this chapter is in Appendix E.⁽¹⁾

⁽¹⁾ *Post*, p. 458.

CHAPTER XIX.

MINORS AND PERSONS OF UNSOUND MIND.

1. Where a suit is instituted in the name of a minor, the next friend shall make an affidavit, to be presented with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise a fit and proper person to act as such next friend. The age of the minor shall also be stated. No order appointing the next friend by whom the suit is to be instituted shall be drawn up.

Affidavit by
next
friend.
Order of
appointment
not to be
drawn up.
(C. 619 A.)

2. The provisions contained in this Chapter as also the provisions contained in O. XXXII of the Code, so far as they are respectively applicable, shall extend to all suits, applications or matters to which a minor, or a person adjudged to be of unsound mind, or a person who, though not so adjudged, is found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting his interest, is a party.

Provisions
applicable
to minors
and persons
of unsound
mind.
[New.]

Our old Rules 619 to 646 which were dated 6th January 1874 were, with certain modifications, embodied in the Code of 1877 (X of 1877); the chief difference, between the rules and that Code, being that the former applied to the case of persons of unsound mind *not so found* by inquisition, while the Code applied to persons adjudged to be so. By O. 32, r. 15 of the present Code (V of 1908), it is provided that the provisions of rr. 1 to 14 of that order, so far as they are applicable, shall extend to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. (For procedure in such a case see r. 3.)

Another difference between the Rules and the old Code was, that, by Rules 624 and 637, a married woman was disqualified from being either a next friend or guardian ad litem, but by the Code ss. 445 and 457, though disqualified from being a guardian ad litem, a married woman was not disqualified from being a next friend.

Now, however, see O. 32, r. 4, a married woman, as such, is not disqualified from being either a next friend or a guardian ad litem.

The rules also did not provide for preference being given to a guardian appointed by competent authority, as to which see O. 32, r. 4 (2).

With regard to the applicability of the procedure laid down by O. 32 to matters unconnected with a suit, see sec. 141 of the Code.

It has not therefore been considered necessary to keep any of our old Rules, which are now sufficiently covered by the Code.

There is no express provision in the Code, such as is in our old Rule 639, to the effect that no order will be made for the appointment of a

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guardian ad litem on the application of the plaintiff, unless it appears that the summons in the suit was duly served and that notice of the application, after the time required for appearance, has been served upon the person with whom the infant is living, but it has been held in cases coming under the Code, and to which our rules were not then applicable, that no such order should be made until the Court is satisfied that the infant has been duly served, and there has been an opportunity for making an application on behalf of the infant. (*Suresh Chunder Wum Chowdhury v. Jagut Chunder Deb* (1898), I. L. R. 14 Cal., p. 204. See also *Jotindra Mohan v. Srinath Roy* (1898), I. L. R. 26 Cal. 267 and *Walian v. Banke Behari Pershad Singh* (1908), I. L. R. 30 Cal. 1021.) At p. 1081 the judgment of the Privy Council states that their Lordships "desire to impress upon all Courts in India the importance of following strictly the rules laid down in the section referred to" (*viz.*, sec. 448 of the Code of 1882, O. 32, r. 3 of the present Code). But it was also held there that inasmuch as it was not shown in that case that the alleged irregularity had caused any prejudice, it was cured by sec. 578 (sec. 99 of present Code).

See O. 32, r. 15 of the Code; and note to r. 2.

Procedure for
enquiry as
to unsound-
ness of
mind.
[New.]

3. The inquiry referred to in the last part of rule 2 shall be made by a Judge at the time of the presentation of the plaint or application as the case may be; the application therefor being by verified petition and it must also be proved by the affidavit of a medical man or other person qualified to give the evidence that the person who is said to be of unsound mind is actually in that condition and incapable of protecting his interests.

No change
of attorney
without
order, when
minor
attains
majority.
[Cf. C. 636.]

4. A minor, on attaining majority, save where he proposes not to proceed with the suit under the provisions of O. XXXII, r. 12 of the Code, or to repudiate the suit under the provisions of r. 13 of that Order, shall not be allowed to appear by another attorney, unless he has obtained an order to change his attorney.

The Saving clause is new.

From Mr. Belchambers' note to the old Rule 635 it appears that an application by a defendant on coming of age to have his guardian *ad litem* discharged was refused with costs, the application having been made through an attorney who was not the attorney on record (*Haridass Mitter v. Amrito Lall Mitter*, suit 296 of 1879, order dated 20th June 1883, *Norris, J.*).

This rule was held inapplicable where the guardian ad litem was an attorney and acted for the infant professionally. In such a case an application for the discharge of the guardian ad litem was made successfully through another attorney, but provision was made for payment of the guardian's costs, such as an attorney would be entitled to who acts for himself when a party to a suit (*Monmohiney Dassee v. Annodapersad Dey*, suit 119 of 1880, order dated 19th March 1888, *Trevelyan, J.*), that is, all costs except of instructions to himself (*Marshall* 237).

Payment or
delivery to
Court
Receiver.
[C. 644.]

5. Where a decree or order, not solely for costs of suit, has been made by the Court, under which any sum of money or any other property shall be payable to or receivable by a minor, or a person of unsound mind

not so found by inquisition, every such sum of money or property shall, unless the Court shall otherwise order, be paid or delivered to the receiver of the Court, whose duty it shall be to receive or realise, or obtain possession of, and hold the same on behalf of such infant or person of unsound mind.

This is old Rule 644. By O. 32, r. 6 of the Code no money or moveable property can be received by a next friend or guardian ad litem without leave of the Court *and* where such leave is given, on his furnishing security, unless he is a guardian of the property appointed or declared by competent authority.

The present rule does not get rid of the necessity for security under O. 32, r. 6. It only provides that, unless otherwise ordered, the money or property is to be paid or delivered to the Court Receiver. If ordered to be paid to any other person O. 32, r. 6 will apply. Query, whether a discretion should not be given to the Court under O. 32, r. 6. Difficulty has often been felt where small sums of money are payable to a minor. The procedure necessary for giving security entails delay and expense which, in some cases, would seem to be unnecessary.

CHAPTER XX.

MOTIONS AND RULES NISI.

Hearing of
motions in
suits.

[New.]
[Cf. 294A
and 294B.]

1. One or more days in the week shall, from time to time, be fixed for the hearing of motions by Courts Nos. 1 and 2, and subject to the proviso to rule 6 of Chapter VII, motions in suits shall ordinarily be made to such Courts on the day or days so fixed, but if urgent, they may be made on any day and, with the permission of the Court to which the suit has been assigned, to any other Court.

Motions not
in suits.

Motions not in suits shall ordinarily be made to Courts Nos. 1 and 2 on the days fixed for the hearing of motions by such Courts, but if urgent, may be made on any day to any Court.

Under the proviso to Rule 6 of Chapter VII, p. 149, where an additional Court is sitting, applications in suits on that Court's list may be made to such Court.

Absence of
Judge of the
Court taking
motions in
suits.

[C. 294C.]

2. Where the Judge of any of the Courts is holding Criminal Sessions or is absent from any cause, motions in suits standing for hearing in his Court, if urgent, may be made in any other Court on the Original Side.

Applications
on motion
after notice.

[New.]
[Cf. C. A.
502.]
[R. S. C.
O. LII, r. 3.]

Ex parte
orders.

3. Except where otherwise provided by Statute or prescribed by these rules, all applications, which in accordance with these rules cannot be made in Chambers, shall be made on motion after notice to the parties affected thereby, unless, according to the practice existing at the time of the passing of these rules, an order might be made absolute *ex parte* in the first instance; but the Court, where satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order, *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just, and any party affected by such order may move to set it aside.

The object of this rule is to do away, as far as possible, with Rules nisi, and to substitute applications by notice of motion.

Sec. 46 of the Specific Relief Act (I of 1877), empowers the Court to grant a Rule. See also O. 38, r. 5 of the Code (attachment before judgment).

Applications for mandamus, injunction or Receiver should be by notice of motion, but may be made *ex parte* in cases of urgency. Cf. R. S. C., O. 52, r. 3.

Minors.—By O. 32, r. 5, no order can be made in a suit or on any application by which a minor is in any way affected without his being represented by a next friend or guardian *ad litem*. Query as to the effect of this rule in such a case. Can the Court for example, make an *ex parte* order against defendants for an injunction or Receiver where one of them is an infant.

In England, where there is no rule similar to O. 32, r. 5, an injunction can be granted against an infant (*Lampriere v. Lange* (1879), 12 Ch. D. 675).

4. A notice of motion shall be intituled in the suit or matter in which the application is intended to be made, and shall state the time and place of application, the nature of the order asked for, with a note at foot specifying the grounds to be used in support of the application. It shall be addressed to the party or parties intended to be affected by it, and their attorney or attorneys (if any), and shall be signed by the attorney of the party moving, or the party himself where he acts in person.

Title, contents, and signature of notices of motions.
[New.]

Time.—4 clear days as a rule, see Rule 7, *post*, and as to short notice see Rule 8.

Grounds.—See Rules 9 and 10, *post*.

5. A rule *nisi* shall be intituled in the suit or matter in which it is granted, and shall state the affidavit or affidavits read, the day on which cause is to be shown, and the nature of the order asked for.

Rule *nisi*: title and contents.
[New.]

6. Where a rule *nisi* is granted by the Court, a day shall be fixed for the hearing thereof and, unless the Court give special directions to the contrary, there shall be at least four clear days between the service of the rule *nisi* and the day named for showing cause against the rule. All affidavits in support shall be filed at the time of obtaining the rule *nisi*. The rule *nisi* together with the affidavit or affidavits of service thereof shall be filed in the Registrar's office immediately after service thereof, but not less than two days before the day named for showing cause. Affidavits in answer or reply shall be filed in the Registrar's office not later than 4 P.M. on the day preceding the day named for showing cause, or, where such day is a Monday, not later than 1 P.M. on the previous Saturday.

Rule *nisi*: four clear days' notice to show cause.
[New.]
[Cf. C. 502(a).]
[B. 321.]

Filing of rule *nisi*.

Filing of affidavits in answer or reply.

The provision in the last two lines in this and the next rule is new.

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Four clear
days' notice
for motion.

Filing of
notice.

[*Cf. C. 502,*
504.]
[*B. 321.*]

Filing of
affidavits in
answer or
reply.

7. Unless the Court or a Judge gives special leave to the contrary, there shall be at least four clear days between the service of a notice of motion and the day named for bringing on the motion. The notice of motion together with the affidavit or affidavits of service and the affidavits in support thereof shall be filed in the Registrar's office immediately after service of the notice, but not less than four days before the day named for bringing on the motion. Affidavits in answer or reply shall be filed in the Registrar's office not later than 4 P.M. on the day preceding the day named for the hearing, or, where such day is a Monday, not later than 1 P.M. on the previous Saturday.

For procedure and time to be allowed in case of an application to strike off the Rolls, or to suspend, see note to Rule 73, Chapter I, *ante*, p. 125.

In England affidavits may be filed up to the time of making the motion. It was held that an affidavit used on a motion, but not filed until afterwards, might be entered in the order as read, though the fact of its not having been filed had not been brought to the notice of the Court; provided that it did not interfere with the date of the order, as where the filing was on the same day (*Re King & Co.'s Trade Mark* (1892), 2 Ch. 462).

Special
leave for
short notice.
[*New.*]

Provisions in
such cases.

8. Leave under the last rule to give short notice of motion may be obtained *ex parte* from a Judge, and where granted, the words "By special leave" shall be written on the notice and signed by the principal officer in attendance. In such a case, the provisions contained in the last rule as to the filing of notice of motion and affidavits shall apply, save that the same shall be filed not later than the next day after service of the notice.

"From a Judge" i.e., in chambers—the attorney may apply.

Notice of
grounds to be
given.

[*Cf. C. 506.*]

Supply of
copies of
grounds
upon
payment.

9. Notice shall be given to the opposite party or parties of all grounds intended to be used in support of, or in opposition to, any rule or motion, and copies of such grounds, other than of proceedings already filed in this Court in the same suit or matter, shall be supplied to any party requiring the same, upon payment of the usual charges.

Under the old rule no notice was required—now, notice of grounds to be used will be given.

What
grounds need
not be filed.
[*Cf. C. 505.*]

10. It shall not be necessary to file any grounds in support of, or in opposition to, any rule, motion or petition which are already on the file of the Court.

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11. Except by leave of Court, no affidavit in support of the application beyond those read in the rule *nisi* or specified in the notice of motion as the case may be, nor any affidavit in answer or reply filed later than the time prescribed in rules 6, 7 and 8, shall be used at the hearing or allowed on taxation.

What affidavits shall not be used or allowed on taxation.
[Cf. B. 324.]

12. Unless costs are asked for in a notice of motion or rule *nisi*, no order for costs shall be made against a party who does not appear.

No order for costs unless asked for, in notice or rules against party not appearing.
[New.]

13. Except as provided in the last rule, or unless otherwise ordered, the costs of a motion or rule in a suit or proceeding shall be treated as costs in the suit or proceeding.

Costs of motion or rule in other cases.
[New.]

14. Every notice of motion and every rule *nisi* shall be called on in its order in the peremptory list of motions. Where, when the motion or rule *nisi* is called on, neither party appears, the motion or rule shall be passed over until the list has been called through. The motions or rules passed over shall then be called on a second time in their order. Where neither party appears to a motion or rule so called on, it shall be dismissed or discharged.

Motions or rules in the peremptory list how to be called on.
[Cf. C. 504 (a).]

Consequence of non-appearance of parties.

15. No adjournment of a motion or rule in the peremptory list of motions shall be granted, except upon affidavit showing sufficient grounds for such adjournment, provided that the Court may, on the first day of hearing of a motion or rule, grant an adjournment (for the convenience of counsel), where all parties consent thereto, and no grounds further than the statement of counsel shall in such case be required.

Adjournment of motion or rule.
[Cf. C. 501 (c).]

A motion or rule so adjourned shall be marked "adjourned," and shall take precedence of other motions and rules on the peremptory list of motions which are not so marked.

Adjourned motion or rule to take precedence.

16. Where the party giving notice or obtaining the rule does not appear, but the opposite party does appear, the Court may dismiss the motion or discharge

Consequence of non-appearance of party

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moving and
appearance
of opposite
party.

[*Cal. 504 (c).*]

Consequence
of non-com-
pliance with
the pro-
visions of
rules 6, 7
and 8 as to
filing.

[*Cf. C. 504
(d).*]

the rule, or make such other order as to the Court may seem fit.

17. In the event of non-compliance with the provisions of rule 6 as to the filing of the rule and affidavit or affidavits of service, or in the event of non-compliance with the provisions of rules 7 and 8 as to the filing of the notice of motion and affidavit or affidavits of service and grounds of the party moving, the rule or motion, as the case may be, shall not, without the leave of the Registrar, be set down in the peremptory list of motions under rule 29 of Chapter X.

CHAPTER XXI.

RECEIVERS.

1. The provisions of Chapter XX shall, *mutatis mutandis*, apply to applications and orders for appointment of interim receivers.

Application of provisions of Chapter XX.

[Cf. B. 329.]

See note to Rule 3 of Chapter XX, *ante*, p. 226.

2. Application for the appointment of a receiver of property the subject matter of a suit shall be made to the Court. In other cases, a receiver may be appointed by a Judge where the matter is one usually dealt with in Chambers.

Application for appointment of receiver to whom to be made.

[Cf. B. 328.]

In other cases.—For example an application for the appointment of a Receiver in execution may be made in chambers.

3. The party obtaining the order of appointment shall, within one week from the filing of the order, file an office copy thereof in the Account Department of the Registrar's office; whereupon an entry shall be made in a register, to be kept for the purpose, of the contents of such order and the particulars of the name of such receiver, and conditions, if any, under which he has been appointed, and the dates on which he is required by the order to file his accounts.

Office copy order of appointment to be filed in the Account Department. Contents of such order and other particulars to be entered in a register.

[New.]

As to power to enlarge time see Chapter XXXVIII, Rule 65, p. 435.

4. Where an order is made directing a receiver to be appointed, the person appointed, if not the Court receiver, shall, unless otherwise ordered, first give security, to the satisfaction of the Registrar, duly to account at such period as may be fixed for what he shall receive as such receiver and to pay the same as the Court or Judge shall direct.

Receivers other than Court receiver to give security.

[Cf. B. 407.]

For rules as to security see Chapter XXXVIII, Rule 71, *et seq.*, p. 436.

5. In every order directing the appointment of a receiver of immoveable property, there shall, unless otherwise ordered, be inserted a direction that the receiver shall have all the powers provided for in O. XL, r. 1 (*d*) of the Code, except that he shall not, without the leave of the Court, (1) grant leases for a

Direction in order of appointment as to receiver's powers.

[New.]

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rr. 5-10.

[*Cf. C. 20.*]

term exceeding three years, or (2) bring suits except suits for rent, or (3) institute an appeal in any Court (except from a decree in a rent suit) where the value of appeal is over Rs. 1,000, or (4) expend on the repairs of any property, in any period of two years, more than half of the nett annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair.

Receiver's remuneration and expenses of management.

[*Cf. B. 408.*]

6. A receiver shall be allowed such remuneration as the Court or Judge shall direct, and in special cases may also be allowed the necessary expenses of management.

The Receiver's allowance is either a percentage on his receipts, or a gross sum by way of salary. Where a commission is allowed, it is generally at the rate of 5 per cent., though the rate in the case of a very large estate has, by arrangement with the Receiver, been fixed as low as 1 per cent. on the value of the estate coming into his hands, provided that the remuneration was not less than a particular sum. [In the goods of Lutchminarain Bogla. Testamentary Suit No. 4 of 1901. Order dated 1st July 1901.] It was further ordered in that case, that the Receiver be at liberty to charge to the estate the cost of such personal establishment as he might consider necessary, and that he be at liberty to appoint such person or persons, as his Agent, at Rangoon and other places, as he might consider necessary and proper for the efficient management of the Estate. (Woodroffe on Receivers, p. 250.)

Form of order of appointment.

[*New.*]

7. The order appointing a receiver shall be in Form No. 1, or as the Court or Judge may direct.

The form of order, embodying the directions contained in Rule 5, was adopted with the approval of the Judges under Act XIV of 1882. (See p. 76, Belchambers' Rules.)

Establishment and costs therefor to be detailed in the order of appointment.

[*New.*]

8. The establishment, clerical or otherwise, required by a receiver, and the cost thereof chargeable to the estate or property of which he is appointed receiver, shall, if possible, be detailed in the order.

No establishment charge to Court Receiver.

[*New.*]

9. Unless otherwise ordered, no charge for any establishment shall be allowed to the Court Receiver.

Receiver to file and pass half-yearly accounts.

[*Cf. C. 19 and*

10. Every order appointing a receiver shall, unless otherwise ordered, contain a direction that the receiver do file and pass his half-yearly accounts in the office of the Registrar; the first of such accounts to be

filed within one month after the expiration of six months from the date of his appointment, or, in a case where security has been ordered, from the date of completion of such security, and every subsequent account within one month after the expiration of each succeeding period of six months.

11. Every such account shall show what the balance in hand is, whether any, and if any, what portion thereof is required for the purposes of the estate, and how much may be paid into Court, and shall be filed in the Account Department of the Registrar's office, together with an affidavit verifying the same in Form No. 2.

This and the following rules, which were originally drafted by Mr. Justice Trevelyan, lay down the new practice to be followed in filing, vouching and passing of Receiver's accounts.

Cf. R. S. C., O. 50, rr. 18-22.

Questions to be dealt with on passing of accounts.—It has been held that the only question which properly arises, on an application by a Receiver to pass his accounts, is as to the items of that particular account, and involves the inquiry whether all his collections, made on behalf of the property of which he is the Receiver, are duly entered in the accounts, and next, whether all his disbursements are payments properly made in respect of that Estate. These are the only matters which can conveniently be dealt with on an application to pass accounts. But it by no means follows that a Receiver's liability is restricted to matters shown upon his accounts. If there is any liability attaching to the Receiver other than that which appears on the face of the accounts, the proper course is to sue the Receiver for the purpose of establishing that liability. It is impossible on an application to pass a Receiver's accounts, to go into serious questions with regard to his liability and responsibility, which are not dependent upon the accounts filed by him, but arise independently of his accounts. Questions of this sort can only be satisfactorily dealt with by suit. Therefore, it was held, objections as to mode of management; improper compromises of suits; the sanction by the Receiver of unjustifiable methods on the part of niaibs or other employes; the improper taking of instalment bonds by the niaibs for a consideration, with the object of giving time to the debtors to pay their debts; the taking of muzzars by employes of the Estate, which were not credited, were not allowed to be gone into. (*Coomar Suttia Sankar Ghosal v. Rancee Golpurnoney Dassee* (1900), 5 C. W. N. 223.) In that case, it was also urged that the Receiver's accounts did not include Mofussil collections made by employes of the Estate, and it was contended the Receiver's accountability extended to all those collections, but it was held, under the circumstances of that particular case, that this contention failed.

12. Every such account, before being submitted to the Court or a Judge, shall be examined and vouched by such officer, ordinarily one of the Assistant Registrars of the Court, as the Registrar may either generally from time to time, or particularly with reference to a particular estate or account, appoint for that purpose. Such officer shall have all the powers of officers of the

Account to show balance in hand and how much may be paid into Court, etc.
To be filed in the Account Department with affidavit.
Form of affidavit.

(*Cf. C. 21.*)
[*B. 110.*]

Examining and vouching of accounts by officer.
[*New.*]

Powers of such officer.

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Court to whom references are made, and may require the attendance of the receiver or his explanations, or his evidence upon oath or affirmation, or the production of any document by him, and shall embody the result of his examination in a certificate.

Appointment
for passing
accounts.
[*New.*]

13. After the officer shall have completed his examination under the last rule, he shall obtain an appointment from the Senior Judge sitting on the Original Side for passing such accounts, of which appointment notice shall be given to the parties and to the receiver.

Notice there-
of.

Objections
to account
to be filed.
[*New.*]

14. Objections to an account shall be filed in the Account Department of the Registrar's office, one week before the day fixed for the passing of the accounts, or within such further time as may be allowed by the Court or a Judge. They shall contain in a concise form the nature of the objections, and shall be signed and verified in the form prescribed for the signing and verification of pleadings.

Signing and
verification.

Passing of
accounts by
Court or
Judge.
[*New.*]

15. Where no objections are filed, or taken by the examining officer, the Court or Judge shall, where otherwise satisfied, pass such accounts. Where objections are filed or taken by the examining officer, the Court or Judge, upon hearing such objections, shall make such order as may be proper.

Order as to
payment
of balance.
[*Cf. B. 410.*]

16. The Court or Judge, on the passing of the accounts, may make such order as to the payment of the balance, appearing due on the accounts, or any part thereof, either into Court or in such other manner as may seem proper.

Procedure as
to hearing of
objections.
[*New.*]

17. The Court or Judge may, from time to time, adjourn the hearing of any objections, or may either hear such objections or refer them to an officer of the Court, or to any other person, with such directions as may to the Court or Judge seem fit.

Consequences
of receiver's
negligence
to file
accounts, etc.
[*Cf. B. 410.*]

18. Where any receiver shall neglect to file his accounts, or to pass the same, or to pay the balance or any part thereof as ordered, the matter shall be reported by the officer mentioned in rule 12 to the Registrar, who may of his own motion, or shall, on the application of any of the parties interested, certify to the Court or a Judge such neglect, and the Court or Judge may, from

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time to time, when the accounts of such receiver are produced to be examined and passed, not only disallow the remuneration therein claimed by such receiver, but also charge him with interest at the rate of six per cent. per annum upon the balance, if any, so neglected to be paid by him during the time the same shall appear to have remained in the hands of such receiver.

Disallow-
ance of re-
muneration
and charging
with interest.

19. Where any receiver fails to file any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required by notice to attend before a Judge to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given including the discharge of any receiver and appointment of another and payment of costs.

Consequences
of default by
receiver.[R. S. C.
O. L., r. 21.]

20. Rules 10 to 19 shall apply to a manager or guardian of the estate of a minor, and a manager of the property of a lunatic appointed by the Court.

Rules applic-
able to mana-
ger or
guardian.
[C. B. 412.]

21. Where any estate or share of an estate situate outside Calcutta has been sold by a receiver, such sale shall be notified by such receiver to the Collector of the district in which such estate or share of estate is situated.

Sale by
receiver of
property out-
side
Calcutta to
be notified
to Collector.
[C. 21(a).]

22. The forms to which reference is made in this Chapter are those in Appendix F.⁽¹⁾

Forms.
[New.]

(¹) *Post*, p. 458.

CHAPTER XXII.

COMMISSIONS.

Application
for commis-
sion.

[New.]

Forms of
order and
writ.

1. An application for the issue of a commission under O. XXVI, r. 1 or 4 of the Code, may be by summons in Chambers to all parties who have appeared, or *ex parte* where there has been no appearance. The order for such commission shall be in Form No. 1 and the writ of commission shall be in Form No. 2.

Under Rule 515B (14) of the Rules passed in 1905, which rules gave power to the Registrar or Master to deal with certain Chamber applications, those officers could only issue a Commission under section 383 of the old Code (O. 26, r. 1 of present Code), i.e., in a case where the person to be examined was resident within the local limits. This restriction has now been removed.

Commissioners.—Under O. XXVI, r. 3 of the Code, the Court may issue a commission “to any person whom the Court thinks fit to execute it.”

It is our practice to issue commissions for the examination of witnesses in Calcutta to junior members of the Bar. This rule of practice does not apply where the commission is to be held *outside Calcutta*; nor where a commission is sent out from England. In either of the latter cases an attorney may be the Commissioner. (See letter No. 551, dated the 10th May 1906, from the Registrar to the Honorary Secretary of the Bar Committee.)

In issuing commissions to the Judge of another Court, it is our practice to include in the order power to him to nominate a pleader or other fit person to act, in the event of his being unable to act himself.

Upon the question being raised in the case of *In re Ghaseeram*, 12 B. L. R., App. 4, as to whether fees should be received by judicial officers for executing commissions, it was resolved by Government, that the receipt of such fees was improper. (See App. R., *post*, p. 550.)

Examination of witnesses.—The examination of witnesses under a commission or *de bene esse* is of the same nature as an examination in open Court, and should be conducted by counsel and not by attorneys. [*Hoffman v. Framjee*, 7 Coryton (1864-65); *Prankrishna v. Biswanath* (1872), 8 B. L. R., App. 101.]

This only applies where the commission sits in Calcutta. (*Belchambers' Practice*, p. 67.)

On an application for a commission to examine a *purdahnasheen* witness in Calcutta, in support of a claim in an administration suit, with liberty to the attorney to conduct the examination, the practice of allowing an attorney to examine witnesses on a reference was relied on. In granting the application the Court observed “the matter being a reference, leave is given to the attorney to examine the witness under commission, without deciding the abstract question one way or the other.” (*Foonendrobhoosan Chatterjee v. Moulvie Ashraffooddeen Ahmed*, Suit 694 of 1879, cited in *Belchambers' Practice*, p. 67.)

Costs.—See section 193 of the Code; when a person exempted from personal appearance in Court claims the privilege of such exemption and it is necessary to examine him on commission, he *shall* pay the costs of that commission unless the party requiring his evidence pays such costs.

On an application to examine the defendant on commission, he claiming such exemption, but asking that the costs should be made costs in the cause, it was held that the Court had no option under the section—the defendant must himself pay the costs. (*Eastern Ranchi Gold Co. v. Rajah Sir Surendro Mohun Tagore*, 16th July 1891, Hill, J.)

Notice of time and place.—Our forms of order and Commission have been somewhat altered. (See App. G, *post*, pp. 460, 461.)

By O. 26, r. 18 of the Code, the Court shall *direct* the parties to the suit to appear before the Commissioner. Our order will therefore contain such direction. Due notice of the time and place fixed for proceeding should be given (see note to that rule in *Woodroffe & Amir Ali's C. P. C.* and see section 33 of the Evidence Act, I of 1872). Our form of Commission provides that reasonable notice shall be given to *all* parties, i.e., whether they have appeared or not. A defendant is under Rule 3 of Chapter XIV *ante*, allowed to appear and cross-examine the plaintiff's witnesses, even where the suit is heard *ex parte*, and similarly on a Commission he is entitled to appear and cross-examine.

As notice is required to be given to *all* parties, of the time and place fixed for the examination and as they will now by the order be *directed* to appear, our practice as to joining in the Commission can be done away with. This will save time. It is suggested that when possible, we should use the form of order used in England (see App. K, Form No. 35B, R. S. C., "order for appointment of Special Examiner to take Evidence abroad"), providing for notice being given by the attorneys for the applicants, to the other side, of the day they propose to send the Commission, and for the exchange of the names of Agents at the place where the Commission is to be executed—upon whom notice of the time fixed for examination can be served.

Where the examination is to be on interrogatories the order should provide for the exchange of interrogatories within a time to be fixed and of cross-interrogatories within a time thereafter.

Using of evidence taken under commission.—On the Original Side of the Court, it has been held that evidence taken on commission does not become evidence in the suit until tendered and put in. (*Hemanta Kumari v. Banku Behari Sikdar* (1905), 9 C. W. N. 794; following *Kusum Kumari Roy v. Satya Ranjan* (1902), 7 C. W. N. 786, I. L. R. 30 Cal. at 1003; dissenting from *Nistarini v. Nundo Lal* (1899), 3 C. W. N. CCXXXIX; and *Dwarkanath v. Gunga Dayi* (1872), 8 B. L. R. App. 102.)

Depositions taken *de bene esse* or on commission will not be entered in the appeal paper book unless put in. (See Chapter XXXII, Rule 8, *post*, p. 330.)

It has, however, been held in an appeal from the *mofussil*, that "regard being had to the practice of the *Mofussil* Courts, which is not only perfectly consistent but also in strict accordance with the provisions of the C. P. C., it is not necessary to tender the evidence taken on commission, formally at the trial, to make it evidence in the case." (*Dhanu Ram Mahto v. Murli Mahto* (1909), I. L. R. 36 Cal. 506.) See also to the same effect (*Man Gobindo Chowdhuri v. Shashindra Chandra Chowdhuri* (1907), I. L. R. 35 Cal. 28).

Where the opposite party had not had full opportunity for effectual cross-examination (evidence in chief lasted from 5 to 7; witness stated he could stay for another half hour, but could not attend again before leaving for England; Counsel for opposite party stated he could not finish the cross-examination in half an hour), held inadmissible (*Boisgarnoff v. Nahapiet Jute Co. Ltd.* (1901), 5 C. W. N. CCXXX).

Held also in that case, that the fact of the deposition not having been read and signed by the witness would not alone prevent its reception in evidence.

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rr. 1-3.

Mode of enforcing attendance of a witness before a Commissioner.—
See now O. 26, r. 17 (2) of the Code.

Letters of Request.—Under sec. 77 of the Code the Court may issue a *Letter of Request* in lieu of a Commission, to examine a witness at any place not within British India.

See R. S. C. O. 37, r. 6 (a) and notes thereto in Yearly Practice.

Letters of Request should issue for all countries except the United States, for which Commissions must be used.

From correspondence between the Court and the Government of India, it appears, that in the opinion of the Secretary of State, Letters of Request addressed to foreign Courts ought to contain specific interrogatories, except, when the Court issuing the Letters thinks, that a witness can give material evidence, not easy to define, which can best be elicited by *vivâ voce* examination by agents of the parties, and, where both parties agree to be represented at such examination. (See Letter No. 892, dated 17th June 1910, from Home Department.)

Translations of all documents, including the Letter of Request itself, must be furnished. (See Letter No. 815, dated 30th May 1911, from Home Department.)

(For procedure to obtain appointment of a Special Translator see note to Rule 25 of Chapter IV, *ante*, p. 137.)

An undertaking, to pay any expenses incurred, is to be given by the attorneys for the parties taking out the Commission; such undertaking (bearing an 8 annas stamp) being signed by the individual members of the firm.

When this has been filed, and the translations put in, the Letter of Request is signed by the Chief Justice and transmitted by the Registrar, with the Interrogatories, Cross-Interrogatories and translations, to the Secretary to the Government of India, Home Department, for transmission to the Foreign Office. For example, see papers in case of *Yasan Elahi v. Johann Smidt*, suit 261 of 1910; *Strube v. Walker Goward*, suit 733 of 1910; and *Moti Lall v. Max Bernhardt*, 180 of 1901.

In the last case the parties were unable to supply the name of the proper tribunal to whom the Letters of Request should be addressed, that was therefore left blank in accordance with the procedure laid down in para. 2 of Lord Kimberley's despatch No. 46, dated 21st September 1893.

Directions to
a Commis-
sioner to
examine
witnesses.
[Cf. B. 344.]

English
dates
required.

Deposition
to be read
over, signed,
etc.

2. The Commissioner appointed to examine witnesses, in taking an examination, shall have regard to the provisions of the Indian Evidence Act; and shall, in case the advocate or other person examining the witness, press any question which such Commissioner shall have disallowed, record such question and the answer thereto, but the same shall not be admitted as evidence unless the Court or the Judge before whom the deposition is put in evidence shall so direct. Where times or dates according to any other than the Christian era are mentioned, the Commissioner is required to add the Christian era corresponding thereto.

3. After the deposition of any witness shall have been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary,

translated to the witness in order that mistakes or omissions may be rectified or supplied. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination. [B. 345.]

4. Commissions shall be made returnable within such time as the Court, Judge or officer shall direct. Commissions when returnable. [Cf. C. 270.]

5. The forms to which reference is made in this Chapter are those in Appendix G.⁽¹⁾ Forms. [New.]

⁽¹⁾ *Post*, p. 460.

CHAPTER XXIII.

**AWARDS ON REFERENCES TO ARBITRATION
IN SUITS.**

On submission of award Registrar to give notice to the parties.
[Cf. B. 346.]

1. Where an award has been submitted to the Court for the purpose of being filed as contemplated by the second schedule, paragraph 10 of the Code, the Registrar shall give notice of such submission to the parties, that the same will be filed on either party providing the requisite stamps, and that the Court will proceed to pass judgment on such award on a day to be fixed in the notice, which date shall be not less than 10 days from the date of the submission of the said award. (Form No. 1.)

Form.¶

Notice of submission.—Para. 10 of the 2nd Schedule to the Code, requires the arbitrator to sign the award and cause it—the original—to be filed in Court together with any depositions and documents taken and proved.⁽¹⁾

Under Art. 158 of the Limitation Act (IX of 1908) which applies only to an award on a reference in a suit, the time allowed for applying to set aside the award is 10 days from the submission thereof to the Court, i.e., presumably *proper* submission, of the original and all the necessary documents. Arbitrators as a rule being laymen, and not aware of the procedure, often omit, in the first instance, to send what is necessary.

We do not issue the notice till the submission is complete.

As to setting down in the List for judgment, see Chapter X, Rule 30 (b), *ante*, p. 168.

Submission of draft decree according to award.
[B. 350.]

2. A person desirous of applying to the Court under the provisions of the second schedule of the Code for judgment in terms of an award may, at least two days before the date fixed for judgment, lodge with the Registrar, for submission to the Court, the draft decree which he considers the award warrants, and shall at the same time serve a copy thereof on any party or parties interested in the said award. At the hearing of the application the Court may adopt, modify or correct such draft, and the decree shall be drawn up accordingly.

Disposal of such draft at hearing.

⁽¹⁾ Note that under the Arbitration Act the Arbitrator is required to file "the award or a signed copy thereof." Other documents are not necessary.

Rules under section 20 of the Indian Arbitration Act, IX of 1899.

[These are all new.]

3. All applications, affidavits, and proceedings under the Act shall be intituled in the matter of the Act, and in the matter of the arbitration. Title of applications, etc.

This and the following rules have been framed (altering our old rules passed on 10th August 1900), in consequence of the decision of the Appeal Court in *Bajinath v. Ahmed Musaji Saleji & Ors.* (1912), I. L. R. 40 Cal. 219; where it was held, that in a case under the Act, the award is to be filed not on the application of the parties, but at the instance of the arbitrator; and when the award has been filed, the result is, not that there is a suit in which a decree has been passed, but that there is an award which is enforceable as a decree.

The Limitation Act has not provided a special clause for an application to set aside or remit an award made under the Act and the general Article 181 does not appear to be applicable (see *Rivaz's Limitation Act*, note to that Article). But as, under section 15 of the Arbitration Act, the award, on being filed, becomes enforceable as a decree, execution can issue at once. If the opposite party desire to stay execution pending an application to set aside or remit, they should apply.

For procedure where a special case for the opinion of the Court is stated in the award, see Rule 14, *post*.

4. All applications under the Act shall, except as hereinafter otherwise provided, be made by petition. What applications shall be by petitions.
The person making any application shall be called the petitioner, and any person served with notice thereof a respondent.

5. An application under section 12 of the Act may be made to a Judge or to the Registrar or Master upon summons to all parties interested. Every application under rule 11 shall be to a Judge. All other applications shall be to the Court. Application under section 12 of the Act may be by summons.

Section 12, *i.e.*, application to enlarge time for making award.

Rule 11, *post*, *i.e.*, application for the opinion of the Court upon a special case.

6. Every petition shall be divided into paragraphs numbered consecutively, and shall contain, in a summary form, a statement of the material facts, and the nature of the relief asked for, and shall specify the persons liable to be affected thereby. Contents of petitions.

7. Upon any application under the Act, other than an application under section 12, the Court or Judge, as the case may be, shall, except as provided in rule 15, direct notice thereof to be given to all persons specified in the petition, as directed in rule 6, and to such other persons as may seem to the Court or Judge to be liable Upon application other than under section 12 of the Act notice to be given.

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to be affected by the proceedings, requiring, where necessary, such persons to show cause, within the time specified in the notice, why the relief sought should not be granted.

Statement
of special
case for
Court's
opinion.

8. The arbitrators or umpire may exercise the power conferred by section 10, clause (b) of the Act, to state a special case for the opinion of the Court, either before the conclusion of any reference, or by their or his award.

Contents of
such special
case.

9. Every special case stated under rule 8 shall contain and contain only a statement, in a summary form, of the material facts and the points for the opinion of the Court.

Procedure
therefor.

10. Where the arbitrators or umpire state a special case for the opinion of the Court before the conclusion of a reference, they shall transmit the same, or a signed copy thereof, to the Registrar, and shall at the same time give notice of such transmission to the parties.

Application
for Court's
opinion on
special case.
Setting
down of
special case.

11. Any party interested may apply for the opinion of the Court upon such special case. The application shall, in the first instance, be to a Judge. Upon the return of the notice to be issued under rule 7, the special case shall be set down before the Court, on the day fixed by the notice, on the special peremptory list, for the opinion of the Court on the points stated.

Opinion may
be filed.
Office copy
thereof with
award.

The opinion of the Court may be filed by any party to the application, and an office copy thereof taken in the usual way for transmission to the arbitrators or umpire. Such office copy shall be added to and shall form part of the award.

See Chapter X, Rule 30, *ante*, p. 168, for setting down in the list.

Procedure
for
submitting
award to be
filed.

12. Where the arbitrators or umpire have been requested to file the award, they shall cause the award or a signed copy thereof to be filed in Court in accordance with section 11 (2) of the Act, by forwarding the same (together with the necessary Court-fees for filing), under a sealed cover addressed to the Registrar, with a letter requesting that the award be filed.

Court fee.—Rupees 2 for filing the award.

Registrar
to file
award and
give notice.

13. Where the provisions of the Act and of rule 12 appear to have been duly complied with, the Registrar shall forthwith file the award, and give notice thereof

to the arbitrators or umpire who shall thereupon notify the parties as required by section 11 (2) of the Act.

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14. Where a special case for the opinion of the Court is stated in the award, the Registrar shall, on receipt of the award, place the matter on the special peremptory list before Court No. 1, on the next motion day after the expiry of one week from the receipt of the award, and issue notice thereof to the parties. The Court shall deliver its opinion on such special case, and such opinion shall be added to and form part of the award which shall then be filed.

Procedure where special case for opinion is stated in the award.

15. The Court may stay proceedings under section 19 of the Act on such terms as it thinks fit, but not without notice to the opposite party, except where it appears that the object of granting a stay would be defeated by the delay occasioned by the notice.

Stay of proceedings under section 19 of the Act.

16. The fees in respect of proceedings under the Act shall be according to the table of fees for the Original Side of the Court, as near as the circumstances will permit.

Fees.

17. The form to which reference is made in this Chapter is in Appendix H.(')

Form.

(') *Post*, p. 468.

CHAPTER XXIV.

MONEY RULES.

The first three rules of this Chapter, taken from the Bombay Rules, are in accordance with our practice. The rest are our old Rules 651 to 694 with slight alterations, and with the omission of Rules 654 and 656 relating to the responsibility of the officer holding the post of Accountant-General, and his giving security.

It is suggested that our rules as to payment *into* Court might be made easier. The arrangements, however, under which the Bank of Bengal has the custody of the Suitor's Funds as the Court's bankers, the Government being responsible for the safe custody of the funds (see Belchambers' pp. 274 and 275), were made after correspondence between the Comptroller-General, the Government, the Bank and the Court; any alteration therefore dealing with the method of payment either in or out would have to be first brought to the notice of the Government. As this means further delay, the rules have not at present been altered in this respect.

Application
for payment
of money,
etc., by
Accountant-
General
and other
officers.

[C]. B. 361.]
[C]. C. 331.]

1. No decree or order for delivery out of Government Promissory Notes or for payment out of cash in the hands of the Accountant-General of the High Court, the Registrar or the Sheriff, shall be made except upon the certificate of the officer in whose hands such Government Promissory Notes or cash may be, certifying the amount and particulars of the estate in his hands.

Certificate
of such
officer.

[B. 362.]

2. The certificate in the last preceding rule mentioned may be obtained on a letter signed by the party interested in such notes or cash or by his attorney, addressed to such officer, requesting such certificate and distinctly stating the interest of the party, and the object for which such certificate is required.

Written
authority of
client
requisite for
payment
to attorney.

[B. 363.]

3. Unless otherwise ordered by the Court or a Judge no payment in a suit or matter save and except when it is in respect of costs shall be made to an attorney on behalf of his client without the written authority of the client for such payment properly attested.

Accountant-General—High Court.

Money or
securities
for money

4. Except as provided in rules 21 and 22, all sums of money or securities for money, ordered to be paid or

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delivered into Court on account of any suit or matter, shall be paid, or endorsed and delivered, to the Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal (or such officer or officers as shall for the time being have the custody of the funds of suitors, hereinafter called "such officer or officers as aforesaid"), and shall be entered in books to be kept for that purpose by the Bank of Bengal, or such officer or officers as aforesaid in account with the Accountant-General of the Court: and books containing full and minute statements of the accounts in each cause or matter shall be kept and carried on by the Accountant-General of the Court at his office.

to be paid or delivered into Court.
[C. 651.]

Accounts to be kept in the Bank of Bengal.

And by the Accountant-General.

5. Upon all securities for money brought into Court on account of any suit or matter, or purchased with money in Court on account of any suit or matter, the name of such suit or matter shall be endorsed.

Name of cause to be endorsed on securities.
[C. 652.]

6. Except as provided in rules 21 and 22, the Accountant-General of the Court shall not meddle with the actual receipt of any money or securities for money, ordered to be paid or delivered into Court on account of any suit or matter, but shall only keep such accounts as aforesaid.

Accountant-General not to meddle with funds, but only to keep accounts.
[C. 653.]

7. Where the Accountant-General of the Court shall entertain doubts as to the true intent or meaning of any decree or order under which he shall be called upon to act in pursuance of these rules, it shall be lawful for him, before issuing a certificate, or cheque, or draft, to any person or persons, to require such person or persons to apply to the Court, or the sitting Judge in Chambers, for the purpose of obtaining directions respecting the same.

In case of doubt, the Accountant-General may require application to be made to a Judge.
[C. 655.]

8. The Accountant-General of the High Court shall also be the Accountant-General of the said Court in its Insolvency Jurisdiction.

The same officer to be Accountant-General of the High Court and of the said Court in Insolvency
[C. 657.]

9. Unless otherwise ordered, or prescribed, where any cash in deposit in the Bank of Bengal, or with investment of cash exceeding

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rr. 9-12.

Rs. 600.

[C. 658.]

such officer or officers as aforesaid, on account of any suit or matter, shall exceed Rs. 600 over and above what may be required for periodical or other payments, the Comptroller-General of Accounts for the time being of the Government of India and the Secretary and Treasurer for the time being of the Bank of Bengal or such officer or officers as aforesaid, shall, under the direction and with the privity of the Accountant-General of the Court, invest the same in the purchase of $3\frac{1}{2}$ per cent. promissory notes.

The words "or prescribed" have been added. See Rule 25 of this Chapter and Chapter XXVII, Rule 41, *post*, p. 290.

It is not usual for the Accountant-General to direct the investment of specific sums paid in for special purposes, e.g., security for costs.

Securities
in which
money
invested to
be credited
in each
cause.

[C. 659.]

10. The Comptroller-General of Accounts for the time being of the Government of India and the Secretary and Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, upon investing any money in the purchase of $3\frac{1}{2}$ per cent. promissory notes on account of any suit or matter, shall cause the same to be entered in the books kept by the Bank of Bengal, or such officer or officers as aforesaid, in account with the Accountant-General of the Court, to the credit of such suit or matter, and shall specify the number, dates, and nominal value of such securities.

Interest on
securities
to be drawn
and credited.

[C. 660.]

11. The Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, shall receive all interest accruing upon the securities for money in deposit in the Bank of Bengal, or with such officer or officers as aforesaid on account of each and every suit or matter, and, after deducting therefrom the commission of the Accountant-General of the Court, shall enter the same in the account of such suit or matter.

Bank of
Bengal's
percentage.

[C. 661.]

12. In respect of the funds of suitors, the Bank of Bengal shall be entitled to charge fees on the following scale :—

- (1) On buying and selling securities, $\frac{1}{4}$ per cent.
- (2) On drawing and paying interest, $\frac{1}{4}$ per cent.
- (3) On delivery of securities, $\frac{1}{4}$ per cent.

(4) On transfer made under order of Court, 8 annas per note on notes of less than Rs. 1,000, and Re. 1 per note on all other notes.

(5) On transfer to new loan, consequent on discharge of loan, Re. 1 per 1,000.

13. Except as provided in rules 21 and 22, where the payment of money, or delivery of securities for money into Court, is made under any decree, order or process, a copy of such document, countersigned by a Judge, shall be obtained from the Registrar's office, and carried to the Accountant-General of the Court by the person or persons by whom such payment or delivery into Court is to be made. The Accountant-General, on such copy being produced to him, shall enter the same in his books, and shall mark "entered" at the foot of such copy and subscribe his name thereto, and shall, by a certificate or draft under his hand, specify the date of the decree, order or process and the particulars of the money, or securities for money, to be paid or delivered thereunder, and the name of the suit or matter to the account of which the same is to be placed. He shall then deliver such certificate or draft, with the copy of the decree, order or process to the person or persons aforesaid who shall take the same, together with the money, or securities for money, specified in such certificate or draft, to the Bank of Bengal, or such officer or officers as aforesaid. The Secretary and Treasurer of the Bank of Bengal, or such officer or officers as aforesaid, upon examining such certificate or draft, and the copy of the decree, order or process and receiving the said money, or securities for money, shall deliver a receipt for the same in duplicate, signed with his hand, specifying the particulars of the money, or securities for money, so received to the person or persons aforesaid, who shall carry one of such receipts to the Accountant-General of the Court, and that officer shall make an entry in his books and file the same in his office as of record.

Mode of proceeding on bringing money, or securities for money, into Court.

(Cal. sec.) A copy of decree or order to be countersigned by Judge.

And produced to the Accountant-General.

And with his certificate or draft deliver to the Bank of Bengal, together with the money or securities for money.

Bank's receipt to be filed with the Accountant-General.

The wording of this rule has been slightly altered by reason of our alteration in the forms of warrants, under which the Sheriff will now pay monies realized by him to the Accountant-General. See note to Chapter XVII. Rule 20, *ante*, p. 210, and Rule 24, p. 211.

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Mode of proceeding on taking money, or securities for money, out of Court.

[*Cal. 663.*]

A copy of decree or order to be countersigned by a Judge.

And produced to the Accountant-General.

And with his certificate or draft deliver to the Bank of Bengal.

These, with a receipt for the amount, to form sufficient authority for payment.

Periodical payments.
[*C. 664.*]

14. Except as provided in rules 23 and 24, where a decree or an order is made for the payment or delivery of money, or securities for money, out of Court, a copy thereof, countersigned by a Judge, shall be obtained from the Registrar's office, and carried to the Accountant-General of the Court, by the person or persons to whom such payment or delivery is to be made. The Accountant-General, on such copy being produced to him, shall enter the same in his books, and mark "entered" at the foot of such copy, and subscribe his name thereto, and shall, by a certificate or draft under his hand, specify the date of the decree or order, and the particulars of the money, or securities for money, to be paid or delivered out thereunder, and the name of the suit or matter in which the decree or order has been made, and enter such certificate or draft in his books. He shall then, having satisfied himself as to the identity of the person or persons to whom payment or delivery under the decree or order is to be made, and upon a proper receipt being given to him, deliver his certificate or draft, with the copy of the decree or order, to such person or persons, who shall take the same to the Bank of Bengal, or such officer or officers as aforesaid, and shall, upon receiving the money, or securities for money, specified in such certificate or draft, give a receipt for the same to the Bank of Bengal, or such officer or officers as aforesaid, which decree or order, certificate or draft and receipt shall be a sufficient warrant and authority to the Bank of Bengal for paying or delivering the money, or securities for money, specified in such certificate or draft as also for writing off the same from the account kept by him with the Accountant-General of the Court.

15. Where periodical payments are directed to be made out of any fund in Court, the procedure prescribed by the last preceding rule shall be followed with respect to the first of such payments. Every payment after the first shall be made as follows:— Upon the application of the person or persons entitled to such payment, the Accountant-General of the Court shall issue a cheque or draft for the amount, upon the Comptroller-General of Accounts for the time being of the Government of India and the Secretary and

Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, in favour of such person or persons; and the Secretary and Treasurer of the Bank of Bengal, or such officer or officers as aforesaid, in every such case, shall take and keep the cheque or draft, and pay the amount specified therein without requiring the production of any further copy of the decree or order under which such payment is to be made, or any other document.

16. An office copy, countersigned by a Judge, of every decree or order affecting any payment by any previous decree or order directed to be made out of any fund in Court, shall be obtained from the Registrar's office by the person or persons interested and produced to the Accountant-General of the Court, and, after the same shall have been entered in his books, shall be taken and delivered to the Secretary and Treasurer of the Bank of Bengal, or such officer or officers as aforesaid.

Copy of decree or order affecting any payment previously directed to be produced to Accountant-General. [C. 665.]

17. Every sum retained in cash to meet any periodical payments, unless claimed and taken out within six months of its being so retained shall, when the same shall exceed Rs. 600, be invested under the provisions of rule 9.

When same retained for periodical payments to be invested. [C. 666.]

18. For the purpose of carrying into effect any decree or order for the payment of money or delivery of Government securities out of Court, the Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, with the privity of the Accountant-General of the Court, shall be at liberty to sell and sub-divide the Government securities standing to the credit of such fund, or a sufficient portion thereof.

Sale or sub-division of securities for the purpose of any payment to be made out of Court. [C. 667.]

See note to Rule 15 of Chapter XVI, *ante*, p. 198.

19. Where money, or securities for money, shall be paid or delivered into Court under rule 13, or where interest shall be received under rule 11, the Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, shall debit the

Commission payable to the Accountant-General of the Court. [C. 668.]

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commission payable thereon to the Accountant-General of the Court in the account of such money, security for money or interest, and shall credit the amount in the commission account of the Accountant-General of the Court.

To be transferred to the Government account.
 [C. 669.]

And transfer notified to the Accountant-General of Bengal.

Fines to be paid into the Government account at the Bank of Bengal. And accounted for to the Comptroller-General of Accounts.
 [C. 670.]

Money, or securities for money, to be paid or delivered into Court in its Original Criminal Jurisdiction.
 [C. 671.]

Payment of money out of the Court's Original Criminal

20. The Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, or such officer or officers as aforesaid, shall, at the commencement of every quarter, transfer to the Government account at the Bank of Bengal the amount placed to the credit of the commission account of the Accountant-General of the Court during the previous quarter. On such transfer being made, the Accountant-General of the Court shall notify the same to the Accountant-General of Bengal.

21. Where fines are imposed by the Court, the same shall be paid to the Accountant-General of the Court, and shall by him be paid into the Government account at the Bank of Bengal, less awards to prosecutors. The Accountant-General of the Court shall, at the commencement of every quarter, deliver to the Comptroller-General of Accounts for the time being of the Government of India an account of the fines realised and compensation to prosecutors awarded out of them.

See note to cl. 20 of the Charter 14, Geo. III, and note on subject of fines, App. 8, *post*, p. 552.

22. Save as provided in the last preceding rule, all sums of money, or securities for money, to be paid or delivered into Court on account of any matter in its Original Criminal Jurisdiction shall be paid or delivered by the person or persons by whom such payment or delivery is to be made direct into the Bank of Bengal to the account of the Accountant-General of the Court by his description of office, in addition to his name, such securities for money being first endorsed by the person or persons aforesaid to the Accountant-General of the Court by his description of office, in addition to his name.

23. Where an order is made for the payment out of any money deposited in Court under the last preceding rule, such payment shall be made by means of a cheque or draft in writing drawn by the Accountant-General

of the Court in favour of the person or persons to whom such payment is to be made. Such certificate or draft shall be signed by the Accountant-General in his own name, coupled with his official description.

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r. 22—23.
Jurisdiction.
[C. 672.]

24. Where an order is made for the delivery out of any securities for money deposited in Court under rule 22, the Accountant-General of the Court shall, by means of a certificate, take out such securities from the Bank of Bengal and shall endorse and deliver the same to the person or persons to whom such delivery is to be made.

Delivery of securities out of the Court's Original Criminal Jurisdiction.
[C. 673.]

25. The Accountant-General of the Court shall, at the commencement of every quarter, deliver to the Chief Justice an account of all deposits made in the Court's Original Criminal Jurisdiction, and the Chief Justice shall make such order as to the investment of the uninvested deposits, or otherwise, as to him shall seem fit.

Quarterly Account of deposits made under rule 22.
Order for investment.
[C. 674.]

26. Where payment or delivery of any money, or securities for money, is directed to be made out of Court to persons as partners, or suing or sued as such, the Accountant-General's certificate, or cheque, or draft, for the same, may be issued to any such partners.

When payment directed to partners.
[C. 675.]

27. Where payment or delivery of any money, or securities for money, is directed to be made out of Court to the legal personal representatives of any person, the Accountant-General's certificate or cheque, or draft, for the same, or any portion thereof for the time being remaining unpaid or undelivered, may, upon proof to the Accountant-General of the death of any such legal personal representatives, whether before, on, or after the date of the decree or order, be issued to the survivor or survivors of them.

Or personal representatives.
[C. 676.]

28. Where payment or delivery of any money, or securities for money, is directed to be made out of Court to any person named in the decree or order, or his legal personal representatives, the same, or any portion thereof for the time being remaining unpaid or undelivered, may, upon proof to the Accountant-General of the death of such person, whether before, on, or after the day of the date of the decree or order, be issued to such legal representatives or the survivor or survivors of them.

Or to a person or his personal representatives.
[C. 677.]

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rr. 29—33.

Insufficient
representation.

[C. 678.]

Powers of
attorney for
payment
of money or
delivery of
securities for
money.

[C. 679.]

29. Unless otherwise ordered, payment or delivery of money, or securities for money, under either of the last two preceding rules, shall not be made to a personal representative constituted under a foreign grant of probate or letters of administration, or to an administrator *ad litem*.

30. Where any person, to whom payment or delivery of any money, or securities for money, is directed to be made out of Court, by a power of attorney authorises such payment or delivery to be made to some other person or persons, and such power is produced to the Accountant-General of the Court, that officer shall satisfy himself as to the sufficiency of the power, and as to whether it has been duly stamped and executed. If satisfied that it is in all respects proper to be acted upon, he shall cause an entry thereof to be made in his books and mark "entered" at the foot or on the back thereof, and authenticate the same with his initials. He shall then deliver the same, together with his certificate, or draft, or cheque, to the person named therein, having first satisfied describing himself as such.

The Official
Assignee's
cheques to be
counter-
signed by
the
Accountant-
General.

[C. 680.]

31. No money, or securities for money, in deposit in the Bank of Bengal to the credit of the account entitled "the Account of the Official Assignee of Calcutta" shall be paid or delivered out, except the cheque or order for such payment or delivery be countersigned by the Accountant-General of the Court describing himself as such.

Certificates
and
transcripts
of accounts.

[C. 681.]

32. Any person having an interest may, as of course upon payment of the established fees, obtain from the Accountant-General of the Court a certificate of the state of any account in his books, or of the non-compliance with any decree or order, directing the payment or delivery into the Court of money, or securities for money, or a copy of any account in the books of the office relating to the funds in any suit or matter.

The
Accountant-
General's
books to be
open to
inspection.

[C. 682.]

33. All the books of the Accountant-General of the Court, as well those in which orders or certificates are entered as those in which the accounts are kept, shall, at all times during office hours, be open to the inspection of suitors, or their attorneys, upon payment of the established fees.

34. Every officer of the High Court, including the Insolvency Jurisdiction thereof, required to give security for the due performance of his duties, or for any money, or securities for money, in any way in his official possession, shall, at the commencement of every quarter, report to the Chief Justice whether his sureties are living, and, if living, where they are, and whether to his belief they are solvent.

Every officer to report quarterly as to his sureties.

[C. 683.]

35. Where any surety or sureties for any such officer as aforesaid shall die, or become insolvent, the officer for whom he or they was or is, or were or are, surety or sureties, shall immediately notify the same in writing to the Chief Justice, who shall thereupon make such order for the substitution of a new surety, or new sureties, as to him shall seem fit.

And to report immediately the death or insolvency of any surety.

[C. 684.]

Registrar, High Court, Original Side.

36. Where upon a sale by or with the approval of the Registrar, a deposit is required to be made by the purchaser, the same shall be made with the Registrar.

Deposit on sale by the Registrar.

[C. 685.]

37. Where the amount to be deposited shall consist partly or wholly of Government securities, such securities shall be endorsed by the person making the deposit to the Registrar by his description of office, in addition to his name, in the suit or matter in which the same shall have been made.

Government securities.

[C. 686.]

38. The Registrar shall, as soon as possible after the receipt by him of any money, or securities for money, under the two last preceding rules, deposit the same in the Bank of Bengal, in an account to be opened by him in his name and description of office, and entitled "Sale Deposit Account," and enter the same in his books to the credit of the suit or matter in which such money, or securities for money, shall be received by him as aforesaid.

Deposit on sale to be forthwith lodged in the Bank of Bengal.

[C. 687.]

39. Where any other deposit is required to be made with the Registrar on account of any suit or matter, the money, or securities for money, so to be deposited shall be paid or delivered by the person or persons making the deposit direct into the Bank of Bengal to the account of the Registrar by his description of office, in addition to his name; such securities for

Other deposits with the Registrar to be made direct into the Bank of Bengal.

[C. 688.]

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RE. 39—44.**

money being first endorsed by the person or persons aforesaid to the Registrar by his description of office, in addition to his name: a duplicate of the Bank's receipt for such deposit shall be filed with the Registrar.

Payment out
of money
deposited
with the
Registrar.
[C. 639.]

40. Where an order is made for the payment out of money deposited with the Registrar as aforesaid, such payment shall be made by means of a cheque in writing drawn by the Registrar in favour of the person or persons to whom such payment is to be made. Such cheque shall be signed by the Registrar in his own name coupled with his official description.

Delivery out
of securities
deposited
with the
Registrar.
[C. 680.]

41. Where an order is made for the delivery out of any securities for money deposited with the Registrar as aforesaid, that officer shall, by means of a certificate, take out such securities from the Bank of Bengal, and shall endorse and deliver the same to account of any sale by that officer, or as security for costs.

What
deposits to
be made with
the Registrar.
[C. 691.]

42. Unless for special reasons otherwise ordered, or unless otherwise prescribed, no deposits shall be made with the Registrar other than deposits on account of any sale by that officer, or as security for costs.

Order for
payment of
balance of
purchase-
money to
include
direction for
transfer of
deposit with
the
Registrar.
Registrar's
commission
on sale to be
retained.

[C. 692.]

43. Where a purchaser at a sale by the Registrar shall obtain an order for the payment into Court of the balance of his purchase-money, the order shall be drawn up with a direction for the transfer by the Registrar of the amount deposited with him on account of the purchase-money less his commission (unless the same shall have been already paid), to the Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, with the privity of the Accountant-General of the Court, to the credit of the suit or matter to the credit of which the balance of the purchase-money is to be paid.

And
transferred
into the
Government
account
at the Bank
of Bengal.
[C. 693.]

44. The Registrar's commission, where retained as aforesaid, shall be transferred by him into the Government account at the Bank of Bengal, and such transfer shall be notified by him to the Accountant-General of the Government of Bengal.

45. The Registrar shall, at the commencement of every quarter, deliver to the Chief Justice an account of every deposit made with him as aforesaid, and the Chief Justice shall make such order as to the investment of uninvested deposits, or otherwise, as to him shall seem fit.

Quarterly
account of
deposits with
the Regis-
trar.
Order for
investment.
[C. 694.]

CHAPTER XXV.

SHERIFF.

Office hours.
[*New.*]

1. The office hours in the Sheriff's office shall be the same as those prescribed for the office hours of the Original Side.

Noting of
date on writ
or process
and endorse-
ments
thereon.
[*Cf. C. 200.*]

2. The Sheriff shall note on every writ or process the date on which it was delivered to him, and shall endorse thereon the day on, and the manner in which, it was executed, and, where the latest day specified in the writ or process, for the return thereof, has been exceeded, the reason why it was not executed, and shall return the writ or process with such endorsement to the Court.

No process to
be executed
during the
Doorga
Pooja.
[*C. 203.*]

3. No process of the Court in any civil suit or matter whatsoever shall be executed against the person of any Hindu during the four days of the Hindu festival called the Doorga Pooja.

Translation
of summons,
etc., where
necessary.
[*New.*]
[*Cf. C. 204.*]
[*B. 371.*]

4. Where the summons to appear and answer or other process has to be served or executed on any person, not being a European, or certified by the attorney issuing the summons or process to be acquainted with the English language, the Sheriff shall, at the time of such service or execution, likewise serve such person with a true translation, in the vernacular language with which such person is familiar, of such summons or other process and of any endorsement that may be thereon respectively; and where on the execution of any warrant or order of attachment against the houses, lands or tenements of any person, it is necessary to affix a copy thereof, shall, if such person be not a European or certified as aforesaid, cause to be affixed, in some conspicuous place on the premises, a true translation of such warrant or order in the vernacular language with which such person is familiar.

Under the old practice the translation was in Bengali, whatever the language of the person to be served. Following Bombay, this rule provides for the translation to be in the vernacular language with which the person to be served is familiar.

5. Any person arrested and any property attached before judgment shall be released from such arrest and attachment by the Sheriff, immediately on his being served with a certificate issued by the Registrar that sufficient security has been taken by that officer.

Release of person and property attached before judgment.
[B. 374.]

6. In every case in which an order to withdraw an attachment is made, the attorney or party at whose instance the same is made shall file an office copy thereof in the Sheriff's office.

Copy of order withdrawing attachment to be filed.
[B. 381.]

Cf. Rules 20—23 of Chapter XVII, *ante*, pp. 210, 211, and see O. 21, r. 55 of the Code.

7. Every sale of immoveable property by the Sheriff shall be made subject to the following conditions, *viz.*:—

Sale of immoveable property subject to certain conditions.

First.—The highest bidder shall be the purchaser. Where any dispute arises as to the last or highest bidding for any lot, the same shall be put up again at the last undisputed bidding.

[Cf. B. 388.]

Second.—The purchaser shall deposit immediately twenty-five per cent on the amount of his bid, and in default, the property shall forthwith be again put up for sale.

Third.—The balance of the purchase-money shall be paid by the purchaser before the closing of the Sheriff's office on the fifteenth day from the day of sale, or where the fifteenth day is a Sunday or other close holiday, then on the first office day after the fifteenth day, and in default of payment within such period, the deposit, after defraying expenses of the sale, may be forfeited, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. Where the proceeds of the re-sale are less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules contained in Order XXI of the Code for the execution of a decree for money.

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Fourth.—The right, title and interest only of the said in the above described property is sold by the Sheriff.

Fifth.—The sale is made under and subject to all other provisions contained in the Code of Civil Procedure relative to sales in execution of decrees.

Where the decree-holder has obtained leave to bid and set-off, see Chapter XVII, Rule 32, p. 218.

Sale of
moveable
property
subject to
certain
conditions.

[New.]

8. Every sale of moveable property by the Sheriff shall be made subject to the following conditions, viz. :—

First.—Terms cash.

Second.—All lots to be at the risk and expense of the purchasers from the time of sale, and to be removed by them with all faults and errors of description immediately after the sale.

Third.—Should any mistake be made in describing any articles, such mistake will not be held to vitiate or affect the sale of such lot in any way, it being understood that intending purchasers should satisfy themselves on all points before purchasing, and no dispute shall be entertained after the sale.

These conditions were obtained from the form in the Sheriff's office.

Search for
writ or
process.

[C. 31 (end).]

9. No person whomsoever shall be permitted to search the Sheriff's office, for any writ of execution, or for any mesne process, except an attorney of this Court, nor such attorney, unless he shall undertake to appear for the judgment-debtor, or perform the exigency of the writ, as the case shall require.

Sheriff to
furnish
inventory of
goods seized
on payment
of fees.

[C. 32.]

10. The Sheriff shall deliver a true copy of the inventory of any goods seized by virtue of any writ or order of this Court, subscribed with his name, to the party or his attorney requiring the same, on payment of such fee as by the table of fees is required.

Retiring
Sheriff to
deliver list
of prisoners
and a list of
unreturned
writs, etc. ;

11. Every Sheriff shall, at the expiration of his office, deliver under his hand a list of all prisoners in his custody to the succeeding Sheriff, with the cause of their detention stated therein; and in like manner, under his hand, a list of all writs, precepts, orders and

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processes remaining in his hands unreturned, whether unexecuted, or partly executed, or wholly executed but not returned, with an account contained therein of what may have been done under such of the same as shall have been executed in the whole or in part; and in like manner, an account under his hand of all lands, houses or other buildings, goods, money or other property or effects, moveable or immoveable, then in his possession by virtue of such writs, precepts, orders and processes as aforesaid, together with an account of all such particulars as may be necessary to explain to the said succeeding Sheriff, the several matters relating to the said writs, precepts, orders and processes, lands, houses or other buildings, goods, money or other property or effects, intended and hereby directed to be transferred to such succeeding Sheriff; and shall at the same time, or as soon after as the same can conveniently be done, deliver over and transfer to the said succeeding Sheriff all such prisoners, writs, precepts, orders and processes, and all such lands, houses or other buildings, goods, money or other property or effects, and all records, books, writings, matters and things appertaining to said office of Sheriff.

[C. 33
(altered).]and an
account
of property
and effects
taken in
execution ;and of all
necessary
particulars ;and all
prisoners,
writs, etc.,
goods, etc.,
books, etc.

12. Every Sheriff who has retired from office may have access to any records, books, writings, matters and things made over by him under the last preceding rule to the Sheriff who succeeded him, at all reasonable times, without payment of any fee.

Retiring
Sheriff to
have access
to records,
etc.

[New.]

Subsistence Allowance.

13. Subsistence allowance payable into Court under O. XXI, r. 39 (1) of the Code shall be paid to the Sheriff.

Subsistence
allowance to
be paid to
Sheriff.

[C. 376.]

See O. XXI, r. 39 of the Code, and Rules 16 and 25 of Chapter XVII, ante. The amount of subsistence allowance is fixed by the Judge and ranges from four annas to Re. 1 a day.

14. Subsistence allowance paid to the Sheriff, prior to the arrest of a judgment-debtor, shall be accounted for to the decree-holder, if the judgment-debtor shall not be arrested, or having been arrested shall be released without being committed to Jail.

To be
accounted
for if debtor
not arrested
or committed.
[C. 377.]

15. Where a judgment-debtor is committed to Jail, if there shall remain any balance of the subsistence allowance

Balance of
subsistence
allowance

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paid prior
to arrest how
to be dealt
with.

[C. 378.]

Sums paid to
Sheriff to be
forwarded to
Superin-
tendent,
Presidency
Jail.

[C. 379.]

Sheriff to
keep an
account.
Inspection
thereof.

[C. 380.]

Sheriff
includes the
Deputy
Sheriff, etc.

[B. 389.]

allowance paid prior to his arrest, such balance shall be deemed to be a payment in part of the first payment of the monthly allowance payable for his subsistence in Jail.

16. All sums paid to the Sheriff for the subsistence of the judgment-debtor in Jail shall be forthwith forwarded by him to the Superintendent of the Presidency Jail.

17. An account shall be kept by the Sheriff of all subsistence allowance paid to him, and such account may be inspected during office hours by any person having an interest.

18. In this Chapter the term Sheriff shall include the Deputy Sheriff or other officer who may be appointed to execute the process of the Court.

CHAPTER XXVI.

REFERENCE RULES.

1. References shall be divided into two classes, "Urgent" and "Ordinary."
Two classes of reference.
[Cf. C. 573.]

2. References which are of an urgent nature or which can be quickly concluded shall be deemed "Urgent References," and shall include the following:—
Urgent reference.
[Cf. C. 573 and 574.]

- (a) Accounts in mortgage suits,
- (b) Sales by the Registrar, including examination of title, settlement of notifications of sale and conditions of sale,
- (c) The settlement of proclamations, of conveyances or other documents,
- (d) Inquiries under O. XXI, r. 41 of the Code or under section 90 of the Probate and Administration Act or section 31 of the Guardian and Wards Act,
- (e) Inquiries as to what would be proper to be allowed for maintenance or marriage expenses,
- (f) Inquiries as to whether proposed terms of any agreement or compromise with reference to a suit would be for the benefit of a minor,
- (g) Inquiries as to the appointment or fitness of persons to act as next friends, guardians, Trustees, Receivers, or Managers of lunatics,
- (h) Such other inquiries and references as may be ordered by the Court or a Judge to be treated as urgent

All other references shall be deemed "Ordinary References."
Ordinary reference.
[Cf. C. 573.]

3. The Court or a Judge may order any ordinary reference to be treated as an urgent reference and *vice versa* and such order may be made upon representation, in writing, by the Registrar or other officer before
Ordinary may be treated as urgent by order and vice versa.

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[*Cf. C. 575.*]

Office copy
of decree or
order of
reference,
when, where
and by
whom to be
filed.

[*C. 546.*]

No office
copy to be
received
after time.

[*New.*]

General
Reference
List.

[*Cf. C. 547
and 548.*]

Where
reference
may be
proceeded
with before
office copy
filed.

[*New.*]

Application
that suit
be dis-
missed or
discon-
tinued for
want of
prosecution.

[*Cf. C. 569.*]

whom the reference is pending with the consent of or upon notice to all parties concerned.

4. An office copy of every decree or order directing a reference shall be filed in the Account Department of the Registrar's office by the party having the carriage of the reference within a week after the filing of the decree or order, and in default, may be filed in the Account Department by any other party within a week thereafter.

5. No office copy of a decree or order of reference shall be received after the period prescribed by rule 4, except under an order of a Judge.

Where the original order was made *ex parte* the application under this rule can be made *ex parte*; otherwise it should be on summons.

6. On such office copy being filed in the Account Department the suit or matter shall be entered in a list to be called "The General List of References" which shall set forth, under appropriate headings, the number and title of the suit or matter, the date on which the copy of the decree or order was filed in the Account Department, the name of the attorney for each party, the name of the officer before whom the reference is to be prosecuted and whether it is an urgent or an ordinary reference.

7. A reference may, where so directed by the Court or a Judge, or in a case of urgency, where the officer thinks fit, be proceeded with before the office copy has been filed under rule 4.

8. Where no steps are taken within 30 days to apply for and file a decree or order of reference, or where no office copy thereof is filed in the Account Department within the time prescribed by rule 4 or within such further time as may have been allowed, any party may apply to a Judge by summons that the suit be dismissed for want of prosecution or that all further proceedings under the reference be stayed or such order made as to the Judge shall seem fit.

The object of the alteration in this rule is to prevent a party from delaying the filing of the decree or order of reference.

Old Rule 569 provided only for an application that the suit be dismissed or discontinued for want of prosecution. This was in many cases

obviously not the remedy for default on the part of the person having the carriage of the proceedings, so further words have been added to enable the appropriate order, under the circumstances of the case, to be made.

9. Lists of pending references of every description shall be published from time to time in such manner as the Registrar shall determine.

General list of references to be published.

[*Cf. Cal. 571.*]

10. The printed cause list for each day shall contain a list (divided into two parts) of the references for hearing on that day by the officer before whom such references are pending, the first part to consist of urgent and the second part of ordinary references and also a list of references (if any) for directions.

Each day's cause list to contain list of references for that day. Divided into classes.

[*Cf. Cal. 572 and 579.*]

11. No reference shall be placed in the list of references for the day for hearing, until deemed to be ripe for hearing by the officer before whom it is pending.

No reference to be placed in list until ripe for hearing.

[*Cf. Cal. 576.*]

12. A reference shall be deemed ripe for hearing when the points in issue have been ascertained and recorded or when, for special reasons, any particular account or enquiry has been ordered or directed to be set down for disposal.

When ordinary reference to be deemed ripe for hearing.

[*Cf. Cal. 577.*]

13. Each reference on the list for the day for hearing shall, unless otherwise ordered by the Court or a Judge, be taken in its turn and shall be continued, from day to day, until concluded, urgent references being taken in priority to ordinary references.

Each reference to be taken in its turn.

[*Cf. Cal. 580.*]

14. Any reference may be postponed---

(a) by order of the Court or a Judge,

(b) being on the list of the day for hearing, by the officer, under circumstances which would justify the postponement or adjournment of a suit,

(c) not being on the list for the day for hearing, at the discretion of the officer.

When reference may be postponed.

[*Cf. Cal. 581, 582 and 583.*]

15. Where the Court or a Judge is of opinion that any reference pending before any officer should be heard by the Court itself or by a Judge, or by some other officer, it or he may make such order as may be necessary for the purpose aforesaid.

Reference may be recalled.

[*Cf. C. 584.*]

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rr. 16—21.**

Conclusion
of an un-
finished
reference
by another
officer.

[*New.*]

16. Where an officer is prevented by death, transfer or other cause from concluding a reference, his successor or such other officer as may be empowered by the Chief Justice may proceed with the reference from the stage at which it has been left, and may for that purpose deal with any evidence taken or minutes recorded by such officer, as if the same had been taken or recorded by himself.

Mode of
proceeding.

[*Cf. C. 533.*]

[*B. 390.*]

[*Mad. 302.*]

17. The mode of proceeding before an officer on a reference shall be by summons (Form No. 1), to be taken out by the party having the carriage of the reference appointing a time for the purpose of taking into consideration the matter of the decree or order directing the reference.

Summons
by whom
prepared,
etc.

[*Cf. C. 534.*]

18. Every such summons shall be prepared and signed by the officer to whom the reference is directed.

Summons
on whom
to be served.
Length of
service.

[*Cf. C. 534
and 535.*]

19. The summons shall, unless otherwise ordered, be served upon all parties to the suit or proceeding, including those against whom the decree or order has been made *ex parte*, and, except when otherwise directed, shall be served seven days before the return thereof.

The addition of the words "except when otherwise directed" give the officer a discretion which, though not authorised by the letter of the old rule, he was bound in some cases to exercise.

Service.

[*Cf. C. 536.*]

[*B. 391.*]

20. The summons shall be served upon parties who are represented by attorneys, by the serving clerk or the serving peon in the Registrar's office, by delivering a copy thereof to the attorney of each party, or to a clerk in the attorney's employ at his place of business, and upon parties who are not so represented, by the party having the carriage of the reference or his attorney, in the manner provided by the rules for the service of process, unless the officer otherwise directs.

Proof of
service.

[*Cf. C. 537.*]

21. The service of such summons, where made by the serving clerk or the serving peon, shall be deemed sufficiently proved by his endorsement of service on the summons, and where otherwise made, shall, where necessary, be proved in like manner as the service of process.

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rr. 22—26.

22. Upon the return of the summons, the officer shall proceed to regulate, as far as may be, the manner of the execution of the decree or order of reference, and shall give such directions as may be necessary, and a day or days shall be appointed for the further attendance of the parties, and all such directions may afterwards be varied or added to, as may be found necessary.

Preliminary
directions.

[Cf. C. 549.]
[B. 392.]

23. In cases where it is not expedient or practicable for the officer to proceed by reason of the refusal or neglect of a party to carry out his directions, the adverse party, upon summons in Chambers and the officer's certificate of the fact, may apply for an order that the party served do carry out the directions within a certain time, or that a writ of attachment may issue against him on default and the Judge shall thereupon make such order as to him may seem proper.

How enforced.

[Cf. C. 550.]
[B. 394.]

For powers of the Court in a case where it is necessary that inspection of property, the subject-matter of the suit, should be had, *e.g.*, by the surveyor in the case of a sale by the Registrar for the purpose of making his report on the property and its value, the mortgagor having refused to carry out the directions of the Registrar to allow such inspection, see O. 39, r. 7 of the Code.

24. In a minute book to be kept for that purpose in each case, there shall be entered the time when a copy of the decree or order directing the reference was received and filed, the directions given under rule 22, the proceedings taken under the decree or order, the time occupied at each meeting, the attendance or non-attendance of the parties, with a short statement of the questions or points decided.

Minute
book.

[C. 545.]

25. Where on the day appointed for the hearing the reference is not disposed of, the parties shall attend, without a further summons, at such times to which the further consideration of the reference is adjourned. Where such further consideration is not adjourned to any specified time a further summons shall be issued.

Where
matter
adjourned,
parties
to attend
without
summons.

[New.]

26. Where any party being duly served fails to attend the meeting or any adjournment thereof, the officer may proceed *ex parte* as regards him, and may direct such an amount of costs (if any) as he shall think reasonable, to be paid to the party attending, by the absent party or by his attorney; or may make such other order as to costs as to him may seem meet.

Proceeding
on default
of party
summoned.

[Cf. C. 540.]
[B. 393.]
[M. ad. 293.]

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Proceeding
on default
of filing
statement
of account,
etc.

[New.]

27. Where a party has made default in filing any statement of account, objection, surcharge or in doing or performing any act which he has been directed to do or perform, the officer shall be at liberty to proceed *ex parte* as regards such party as though he had not appeared, or he may adjourn the meeting or direct any other party to file a statement of account, or proceed to determine the reference on the evidence before him, or strike the same out of his list of references or make such other order including directions as to costs as, under the circumstances, he thinks fit.

Where an accounting party fails to bring in his accounts the plaintiff may be allowed to make up an account upon the materials available. (See notes of cases Belchambers' Practice, p. 306.)

Reconsidera-
tion of
proceed-
ing on
default.

[Cf. C. 529.]

28. Any proceeding, order or direction under the last three preceding rules shall not be reconsidered unless the officer, upon a special application made to him for that purpose, within one week, by the party who was absent or in default, is satisfied that such party was not guilty of wilful delay or negligence. In such case the costs occasioned by his non-attendance or by his default shall be in the discretion of the officer, who may thereupon assess the same and direct them to be paid by the party or his attorney before he is permitted to have such proceeding, order or direction reconsidered, or may make such other order as to such costs as to him may seem meet, and may, where the reference has been struck out of his list, restore the same.

Enforce-
ment of
payment
under order
for costs.

[C. 542.]

29. Where the officer directs any costs or fees to be paid, and it is necessary to enforce payment, an order for that purpose must be obtained from a Judge in Chambers. Application for such order may be made on petition, without notice, supported by a certificate of the officer. The order shall contain a direction for the payment of the costs of obtaining it, and of execution.

Managing
and articled
clerk when
may appear
and act.

[Cf. B. 404.]

30. Managing and articled clerks of attorneys may, on the written authority of their employers, appear and act for their employers in any reference before an officer for which such authority is given, but the officer may require the attendance of the attorney on the record or advocate instructed by him, whenever he thinks fit. The officer shall have power, subject to

an appeal to the Judge in Chambers, to exclude from the aforesaid privilege any clerk whom he may consider incompetent, or to have abused such privilege.

31. The usual fee, for the attendance of the attorney at any meeting on a reference, shall not be allowed by the Taxing Officer unless his name, or that of a competent person on his behalf, appears in the minute book.

Disallow-
ance of fee
for non-
attendance
of attorney,
etc.

[*Cf. Cal.*
643.]

32. Unless otherwise directed, every account, where filed by the accounting party, shall be verified by his affidavit, unless such account has been already scheduled to the plaint or written statement, in which case a copy of such scheduled account shall be filed with a continuation thereof verified as aforesaid. Such account shall be in the form of a debtor and creditor account, and shall truly set forth all sums received by the accounting party. The items on each side of the account shall be numbered consecutively, the items on the credit side showing when, to whom and for what purpose such sums were paid, and the account shall be annexed to the affidavit as an exhibit.

Accounts to
be verified
by affidavit.
Form of such
account.

[*Cf. R. S. C.*
O. XXXIII,
r. 4.]
[*C. 351 and*
352.]

The provision as to numbering of the items is new. By Rule 35 items objected to are to be referred to by number.

33. In taking any account directed by any decree or order to be taken, the items on the debit side of the account shall be charged to the accounting party; and, unless otherwise directed, the items on the credit side of the account shall be vouched by receipts or other satisfactory evidence of payment, except of sums not exceeding Rs. 20, provided it shall appear by the affidavit or affirmation in verification of the account, or other affidavit or affirmation, when, to whom and for what such sums were paid.

Taking
account.
[*C. 353.*]

34. Upon the taking of an account the Court, Judge or officer may direct that the vouchers shall be produced at the office of the attorney of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the officer.

Mode of
vouching
accounts.
[*R. S. C.*
O. XXXIII,
r. 4A.]

The object of this rule is to save time and expense. It is not usual to give such a direction where the parties are not all *sui juris*. The parties may waive particular items (*Re Brown, W. N. (1895), 115.*)

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Objection
to account.
[*Cf. C. 554.*]

35. Unless otherwise directed, every objection to an account, either by way of charge or disallowance, shall be made by a statement, verified by the affidavit or affirmation of the objecting party, setting forth, as far as practicable, the particulars of the amount sought to be charged, or the allowance of which is objected to, and the reasons therefor and every item objected to in an account shall be referred to by its number.

Just allow-
ances.
[*C. 567.*]

36. In taking any account directed by any decree or order, all just allowances shall be made without any direction for that purpose in such decree or order.

For "just allowances" see cases collected in note to R. S. C., O. 33, r. 8, in *Yearly Practice 1913* and *Belchambers' Practice*, p. 304.

Statement of
facts.
[*Cf. C. 555.*]

37. Where the object of the reference is an inquiry as to matters of fact, a statement of fact shall be filed.

Proposal.
[*Cf. C. 556.*]

38. Where the reference directs the settlement of a scheme, a draft of the proposed scheme shall be filed. Unless otherwise directed, where the reference directs the appointment of a receiver, manager or trustee, an affidavit of the fitness of any person proposed shall be filed, and wherever security is required to be given by the receiver or manager with respect to property, a statement of its value or income shall be filed.

Counter-
statement.
[*Cf. C. 557.*]

39. Every objection to a statement of facts shall be made by a counter-statement.

Verification
of statement
or counter-
statement.
[*Cf. C. 558.*]

40. Every statement or counter-statement of facts shall be verified by affidavit.

Further
account, etc.
[*New.*]
[*Cf. C. 559.*]

41. Where any account, statement of objections, or any statement or counter-statement of facts, required to be filed on a reference, is not in accordance with these rules or with the directions given, or where the affidavit in verification thereof be insufficient, a further account, statement, counter-statement or affidavit may be called for and the officer may give such directions as to the payment of any costs thrown away as he may think fit.

Notice of
account, etc.
Furnishing
copy.

42. The party filing any account or statement of objections or any proposal or any statement or counter-statement of facts shall, upon the day of filing the

same, give notice thereof to the opposite party, and where so required, furnish any other party with a copy of the same on the usual terms. [Cf. *Mad.* 290.]

43. Any party improperly objecting to an account or statement of facts shall be liable to pay, as between attorney and client, the costs occasioned by the subsequent proof and also such costs for delaying the reference as the Court or a Judge may direct. Costs when objections improperly made. [C. 560.]

44. A party shall be at liberty to furnish to the officer an unofficial translation of any exhibit put in before him. Should the correctness of any such unofficial translation be challenged, the officer may, on reference to a sworn Interpreter and Translator of the Court, decide the point and amend the translation, if necessary, or may require the document, or any portion of it, to be officially translated. Unofficial translation. [Cf. C. 26C.] [B. 403.]

45. No vernacular document or entry shall be accepted in evidence except with a translation thereof. Vernacular documents not to be accepted without translation. [New.]

46. The costs of any adjournment occasioned by the absence of translation shall, unless otherwise directed, be paid by the party in default. Costs of adjournment for want of translation. [New.]

47. Where the directions given under rule 22 have been carried out and the accounts and statements filed as directed, the officer shall proceed to ascertain and to record in his minute book the points in issue to which evidence is to be directed. Settlement of points in issue. [New.]

48. The officer shall, at the commencement of each daily sitting, hear applications with regard to pending references, and shall not hear any reference until he has disposed of such applications. Hearing of applications. [New.]

49. In all matters referred to him an officer shall be at liberty, upon the application of any party interested, to make a separate report or reports from time to time as to him shall seem expedient, the costs of such separate reports to be in the discretion of the Court, or Judge. Separate report. [B. 397.]

50. Any officer taking a reference may at any time, pending the reference or on its conclusion, apply for Opinion of the Court may be

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obtained on
any question
pending
a reference.

[C. 585.]
[Oj. B. 399.]
[New.]

the opinion of the Court on any question which may arise on the reference and for such purpose may report specially. Such special report may be made at the instance of any of the parties or of the officer himself, and shall be brought before the Court or Judge, within such time and by such party as the officer shall direct, by motion on notice that such special report may be confirmed, discharged or varied or that any directions may be given thereon; and on the hearing of such motion the same may be confirmed, discharged or varied as the Court or Judge shall deem just, or such directions may be given as shall appear to be necessary or expedient in that behalf.

On applica-
tion of the
reference.

[New.]

Where such special report is not brought before the Court or Judge in accordance with the directions given, the officer may himself place the same before the Court or Judge, and such directions may be given as may be thought necessary.

On applica-
tion of any
party.

[C. 586.]

51. In case an officer refuse or decline to make a special report where requested by a party so to do, such party may apply to the Judge in Chambers, on summons to the other parties to the reference, for an order requiring the officer to report specially.

The Judge may in his discretion make such order, upon such terms as to costs and otherwise, as he may think fit.

When con-
duct of
reference
may be
committed
to another
party.

[C. 588.]

52. Where any party prosecuting a reference does not proceed with due diligence, the prosecution thereof may be committed by the officer to any other party, having an interest either as a party to the suit or as a claimant, who has come in and established his claim.

Striking out
reference
for want
of proso-
cution.

[Oj. C. 589.]

53. Where at any stage of a reference no steps have been taken to prosecute it for 30 days, the officer to whom the reference is directed may, where he thinks fit, strike the same out of his list and the same shall also be struck out of the General List of References as hereinafter provided.

Proceeding
where refer-
ence is
struck off.
Restoration.

54. Where an officer strikes a reference out of his list under rule 27 or under rule 53, he shall forthwith certify the fact to the Registrar who shall thereupon strike the reference out of the General List of Refer-

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ences. No reference struck out of the General List of References shall be restored without an order of a Judge, to be obtained on summons to all parties appearing on the reference, and upon such terms and conditions as to costs or otherwise, as the Judge shall direct.

[Cf. C. 569.]
 [B. 406.]

Forthwith.—In a case under Rule 27, the officer should wait for a week before certifying to the Registrar. (See Rule 28.)

The effect of striking a case from the Reference list is not to put an end to the suit, which continues an existing suit so that it may be re-constituted (*Gocool Chunder Gossamee v. Administrator-General*, I. L. R. 5 Cal. 726).

Article 178 of the Schedule to the Limitation Act of 1877 (Article 181 of the present Act IX of 1908), does not apply to an application to restore a suit struck out from the Reference List (*Govind Ch. Gossamee v. Rangunmoney*, I. L. R. 6 Cal. 60), nor to an application to revive a *pending* suit (*Ramnath Bhattacharjee v. Wooma Charan Sircar and others* (1899), 8 C. W. N. 756; and *Bhugwan Dass Khettry v. Nilkanto Ganguli*, 9 C. W. N. 171).

A case struck out may be restored after a lapse of three years on sufficient cause being shown, as that there was an appeal from the decree, and that after disposal of the appeal there were negotiations for settlement (*Suit 309 of 1881, Alangamonjuri Dassee v. Sonamoney Dabee*, August 8, 1885, *Pigot, J.*).

55. Where any reference has been struck out of the General List of References under rule 54, any party may apply to the Court or Judge for such further directions in the suit as may be necessary.

Application for further directions where reference is struck out.
 [New.]

56. Where a suit, referred to an officer, is finally disposed of without his report, or is referred to arbitration by the order of the Court, the parties may forthwith notify the same to the officer who shall thereupon strike out the reference from his list. The Registrar shall also strike out the reference from the General List of References.

Notice where suit is disposed of without report, or referred to arbitration.
 [Cf. B. 405.]

57. Each officer shall at the beginning of every quarter report to the senior Judge presiding on the Original Side all the cases in which he considers that there has been any undue delay in the proceedings before him.

Officer to report delay.
 [Cf. R. S. C. O. XXXIII, r. 8A.]

58. Where it shall appear to the Court or a Judge, on the representation of any officer or otherwise, that there is any undue delay in the prosecution of any account or inquiries, or in any other proceedings under any decree or order, the Court or Judge may

Expediting proceeding in case of undue delay.
 [Cf. R. S. C. O. XXXIII, r. 2.]

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require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party may be directed to summon the persons whose attendance is required and to conduct any proceedings and carry out any directions which may be given; and any costs occasioned thereby shall be paid by such parties or out of such funds as the Court or Judge may direct.

ADMINISTRATION SUITS.

CLAIMS BY CREDITORS AND OTHERS.

Claimants
not coming
in to prove,
etc., excluded.

[R. S. C.

O. LV, r. 44.]

59. Where a decree or order is made directing an account of debts, claims or liabilities, or an enquiry for heirs, next-of-kin, kindred, of a deceased or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the decree or order.

Claims by creditors made after time fixed by advertisements, but before distribution, may be allowed (*Re Metcalfe* (1879), 13 Ch. D. 236, C. A.).

See Rules 75 and 76, *post*.

And generally as to the rights of creditors under an administration decree to participate in undistributed assets—see *Harrison v. Kirk* (1904), A. C. at p. 5.

See also *Rose v. Biddyadhurry Dasseo*, 9 C. W. N. 167, and other cases, as to admission of a creditor but without disturbing past dividends, cited in *Belchambers' Practice*, p. 308.

Advertisement
for
claims.

[Cf. C. 589.]

60. Every advertisement for creditors or other persons having any claim upon, or interest in, the distribution of any assets to be administered by the Court which shall be issued pursuant to any decree or order, shall direct every such creditor, or other person, within a time to be thereby fixed, to send to the Registrar his name, address and description and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him and shall inform such creditor or other

person that in default thereof he will be peremptorily excluded from the benefit of the decree or order. The time for adjudicating on the claims shall be fixed by the advertisement and the name of the officer appointed to hear the reference and adjudicate on the claims shall be stated in the advertisement. (Form No. 2.)

61. Every such advertisement shall be prepared by the party prosecuting the reference, and shall be settled and signed by the officer hearing the reference, and published in such newspapers as he shall direct. By whom to be prepared, settled and signed. [C. 590.]

The advertisement will now be settled by the officer hearing the reference instead of as formerly by the Registrar. For procedure with respect to advertisements see Belchambers' Practice, p. 306. Claims will as hitherto be directed to be sent to the Registrar. After receipt of claims and entering in the Account Department they should be sent at once to the officer dealing with the matter.

62. No creditor, or other person, need make any affidavit or attend in support of his claim, unless he is served with a notice (Form No. 3) requiring him to do so, as hereinafter provided. Affidavit or attendance of claimant unnecessary until notice. [C. 591.]

63. Every creditor may produce or transmit to the Registrar, with the particulars of his claim, any security held by him, or shall produce the same at the time appointed in the advertisements for adjudicating on the claims; and every creditor shall also, if required by notice (Form No. 4), produce all other deeds and documents necessary to substantiate his claim at such time as shall be specified in such notice, being the time appointed for adjudicating on the claims. Creditor to produce security. Notice to creditor to produce other documents. [C. 592.]

64. Every person claiming as heir-at-law, devisee, next-of-kin, kindred, or legatee of the deceased, shall, if required by notice (Form No. 4), produce any pedigree or proof mentioned in such notice, at such time and place as shall be specified therein, being the time appointed for adjudicating on the claims. Notice to heir-at-law, etc., to produce pedigree or other proof. [C. 593.]

65. Any notice to be given under any of the last three preceding rules shall be prepared by the party prosecuting the reference, and shall be signed by the officer hearing the reference and served in the manner prescribed by rule 20 or as the officer shall direct. Preparation, signing and service of notice under last three rules. [New.]

66. In case any creditor, or other person, shall neglect or refuse to comply with rules 63 and 64, he Disallowance of costs of proving

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r. 66—70.

claim.

[C. 594.]

Examina-
tion and
verification
of claims.

[R. S. C.

O. LV, r. 52.]

shall not be allowed any costs of proving his claim unless the officer shall otherwise direct.

67. The executor or administrator of the deceased or such other party as the officer shall direct shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven days prior to the time appointed for adjudication, file an affidavit (Form No. 5) to be made by such executor or administrator or one of the executors or administrators, or such other party, as the officer shall direct verifying a list (Form No. 6) of the claims the particulars of which have been sent in pursuant to the advertisement and stating to which of such claims or parts thereof respectively the estate of the deceased is, in the opinion of the deponent, justly liable and his belief that such claims or parts thereof respectively are justly due and proper to be allowed and the reasons for such belief.

Affidavit
verifying
claims may
be post-
poned.

[R. S. C.

O. LV, r. 53.]

68. In case the officer shall think fit so to direct, the making of the affidavit referred to in the last preceding rule shall be postponed till after the day appointed for adjudication and shall then be subject to such directions as the officer may give.

Inspection
by a
creditor of
another's
claim.

[New.]

69. Any creditor whose claim has been admitted, allowed or proved, may, on payment of the necessary fees, inspect the claims of other creditors filed pursuant to the advertisement.

Appearance
of party
other than
the executor
or adminis-
trator.

[Cf. B. 395.]

[R. S. C.

O. XVI, r.

47.]

70. No party other than the executor or administrator shall, unless with the leave of the officer, be entitled to appear (except at his own risk as to costs) on the hearing of the claim of any person not a party to the suit or matter against the estate of the deceased person in respect of any debt or liability.

As a general rule the Executor or Administrator is the proper person to attend to oppose a claim, per Jessel, *M. R. Re Watta. Smith v. Watta*, 22 Ch. D. 12. Even a plaintiff creditor has no right to attend on a claim, but leave may be given. (*In re Schwabacher Stern v. Schwabacher* (1907), 1 Ch. 719.)

A creditor will not as a rule, be given general leave to attend the proceedings, but he may apply for leave to dispute any particular claim (*ib.*).

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71. At the time appointed for adjudication upon the debts or claims, or at any adjournment thereof, the officer may in his discretion allow any such debts or claims or any part thereof respectively, without proof by the creditors or claimants, and direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information or evidence relating thereto as he may think fit, and may, if he so thinks fit, require any creditor or claimant to attend and prove his claim or any part thereof, and the adjudication on such claims as are not then allowed, shall be adjourned to a time to be then fixed.

Adjudication
upon claims.

[C. 595.]
[Cf. R. S. C.,
O. LV, r. 55.]

Evidence by claimant.—Though the Court will look with suspicion on the uncorroborated evidence of the claimant (see *Hill v. Wilson*, 1 L. R. 9 Ch. 888; *Whittaker v. Whittaker*, 21 C. D. 657; *Re Finch* 23 C. D. 267); and will, in general, require corroboration (*Re Hodgson*, 31 Ch. D. 177; this rule followed in this Court in *Webb v. Smallwood*, Suit 810 of 1896, 7th February 1898); there is no rule of law that such uncorroborated evidence against the Estate of a dead man will be rejected (*Re Garnett*, 31 C. D. 1). "If the evidence of the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon" per Sir J. Hannen *Re Hodgson*, *supra*, at p. 183. See also *Re Farman*, 57 L. J. Ch. 637; *Rawlinson v. Scholes*, 79 L. T. 350; *Re Griffin* (1899), 1 Ch. 413; and see section 134 of the Evidence Act.

72. Notice (Form No. 3) shall be given to every such creditor, or other person as the officer shall think fit, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

Notice to
prove claim.
[C. 597.]

73. Notice (Form No. 7) of the allowance of claims allowed without proof is to be served on the creditor or claimant, and shall, where necessary, be advertised (Form No. 8) under the signature of the officer in such manner as he shall direct.

Notice of
allowance
of claim.
[Cf. C. 596.]

74. A notice to be given under the last two preceding rules shall be prepared by the party having carriage of the reference and shall be signed by the officer and served in the manner prescribed by rule 20, or as the officer shall direct.

Notice by
whom to be
prepared
and signed.
[Cf. C. 598.]

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Claims may
be sent in
previous to
adjourned
adjudication.

[C. 599.]

When claim
not to be
received
without
special leave.

[C. 600.]

Plaintiff, if a
creditor, may
be required
to prove his
claim on the
reference.

[Cf. C. 601.]

Costs, if
proof
unnecessarily
required.

[C. 602.]

Interest on
debts.

[Cf. C. 603.]

75. Any creditor, or other person, who has not sent in the particulars of his claim pursuant to the advertisement, may do so four days previous to any day to which the adjudication is adjourned.

76. No claim shall be received after the time fixed by the advertisement (except as before provided) without the special leave of a Judge, which may be applied for, by summons in Chambers at any time before the distribution of the assets to be administered, and may be granted upon such terms and conditions as to costs and otherwise as to the Judge shall seem fit.

77. Where an account of debts is directed to be taken, the plaintiff, if a creditor, shall send in his claim to the Registrar in compliance with the advertisement for creditors and may be required by any party having an interest in the estate to prove his debt on the reference, notwithstanding that he may have already given such proof thereof in Court as to establish his right to the decree.

78. Any such party requiring such proof unnecessarily may be ordered to pay the costs thereof.

79. Unless otherwise ordered, or unless the provisions of O. XX, r. 13 (2) of the Code are applicable, creditors shall be allowed interest in respect of debts, as to such of them as carry interest, at the rate at which they respectively carry interest, to the date of proof, and subsequent interest, at the rate of six per cent. per annum, and as to all others, at the rate of six per cent. per annum from the date of proof.

Cf. R. S. C., O. 55, r. 62.

Insolvent Estates.—By O. XX, r. 13 (2) of the Code where the property proves insufficient for the payment in full of the debts, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, etc., as may be in forcewith respect to Insolvent Estates.

That paragraph was taken from section 10 of the Judicature Act of 1875 (38 & 39 Vict., c. 77).

It has been held in England that a creditor of an insolvent Estate, whose debt bears interest, is not entitled to interest up to the date of payment but only to the date of the judgment for administration, which by virtue of the Judicature Act, 1875, s. 10, is equivalent to an application

in bankruptcy (see Seton on Decrees, 7th Edition, pp. 1369-1370, and cases there cited).

See also the Presidency Towns Insolvency Act (III of 1909), s. 49 (6).

Where there is a surplus after payment of debts, it shall be paid in payment of interest from the date of adjudication at 6 per cent. on all debts proved in insolvency.

As our old Rule 325, which provided that, unless otherwise ordered, every decree for administration *shall* direct, *inter alia*, that interest be computed at contract rate up to date of proof and thereafter at 6 per cent. might, having regard to O. XX, r. 13 (2), have caused difficulty, and, as it was in other respects considered unnecessary, it has been omitted, and the words from "or unless" to "are applicable" have been inserted in this rule, by which the Referee will be guided.

As to the powers of the Court, in administering an Estate which proves insufficient to pay its debts, to transfer proceedings to the Insolvency Court, see Presidency Towns Insolvency Act (III of 1909), s. 108 (3). The provisions of that section do not apply to a case where probate or Letters of Administration have been granted to the Administrator-General (s. 111).

80. Interest shall be computed on legacies, at the rate of six per cent. per annum from the end of one year from the date of the testator's death unless otherwise ordered, or a different rate is directed by the will.

Interest on legacies.

[C. 604.]

81. In the case of a mortgagee who has obtained a decree on his mortgage, interest shall be computed at the rate and for the time and in the manner specified in such decree or where the time for payment has been enlarged under O. XXXIV, r. 3 of the Code, according to the terms of the order postponing the day fixed for payment.

Interest on mortgage decrees.

[Cf. 605.]

82. Where an officer shall make a separate report of debts or legacies, he shall be at liberty to make such certificate as he thinks fit with respect to the state of the assets; and every person interested shall thereupon be at liberty to apply to the Court as he shall be advised.

Proceeding where a separate report is made.

[B. 398.]

83. The costs of a creditor who is a plaintiff shall not be added to his debt, but shall form part of his costs in the suit. The costs of a creditor (other than a plaintiff) of establishing his claim under a decree or order in a suit shall be added to the amount of his claim.

Costs of a creditor being plaintiff.

[C. 606.]

Costs.—A creditor who brings an administration action on behalf of himself and all other creditors is entitled, where the Estate turns out insufficient to pay the debts, to his costs as between attorney and client (Thomas v. Jones (1860), 1 Drew & Sm. 134).

84. Where, after payment of the costs of the suit, the assets are insufficient to pay the creditors their principal, interest and costs of proof, in full, any

Dividend where fund deficient.

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[C. 607.]

Costs occasioned by unsuccessful claim.

[Cal. 608.]

Certificate or report.

[C]. C. 610.]

To be settled on notice.

[C. 611.]

Filing of report.

[New.]

Procedure to discharge or vary a certificate or report.

[C. 615.]

Officer's certificate or report.

[C. 614.]

Questions of law.

[C. 616.]

dividend ordered to be paid to them shall be computed on the total amount thereof, including the costs.

85. A claimant who fails to prove his claim may be ordered to pay the costs occasioned thereby.

CERTIFICATE OR REPORT.

86. Unless otherwise ordered, the result of proceedings had on a reference shall be stated in the form of a certificate or report, which shall be drawn up in paragraphs, each paragraph being separately numbered.

87. The certificate or report shall be settled on notice to the parties who have appeared on the reference.

88. A certificate or report of an officer made on a reference may be filed in the Registrar's office, on payment of all necessary fees of Court.

89. An application to discharge or vary a certificate or report shall be made by motion, upon notice to be given within fourteen days from the date of the filing thereof, or within such further time as may be obtained for that purpose, but in that case the notice shall mention that it has been given with the leave of the Court. An application for further time may be made by petition in Chambers without notice.

This rule to be strictly followed. In the absence of notice as required by the rule the report will be regarded as confirmed by effluxion of time (*Lutchminarain v. Byjnath Lohia* (1897), 1. L. R. 24 Cal. 437; followed in *Akhoy Kumar Dutt v. The Royal Insurance Co.* (1901), 5 C. W. N. 337; 1. L. R. 28 Cal. 272; In the latter case leave to appeal to the P. C. was refused, 6 C. W. N., p. 41).

90. A certificate or report of an officer, unless discharged or varied, will be taken as conclusive evidence of the facts found therein.

With regard to the power of the Appeal Court to deal with the findings of fact by a Commissioner where such findings have been confirmed by the Judge of first instance, see *Chetty v. Muhammed Essa Sahad* (1901), 5 C. W. N. 692.

91. Where the facts are correctly stated in a certificate or report, questions of law may be raised at the hearing of the suit on further consideration. An application to discharge or vary a certificate or report as to such questions need not be made.

92. A certificate or report after it has become binding will not be re-opened, except on the ground of fraud, surprise or mistake, or such other special ground as may be allowed by the Court, on an application to the Court by motion which may be granted on such terms and conditions as to costs and otherwise as to the Court shall seem fit.

Application to re-open certificate or report after it has become binding.
Motion.

[*Cal. 617.*]

93. After a certificate or report has become binding, the suit or matter shall be set down in the peremptory list for further consideration.

When case to be set down for further consideration.

[*Cf. C. 618.*]

94. The forms to which reference is made in this Chapter are those in Appendix I.⁽¹⁾

Forms.

[*New.*]

[*Cf. C. 609.*]

⁽¹⁾ *Post*, p. 464.

CHAPTER XXVII.

SALES BY THE REGISTRAR.

The rules in this Chapter are, with certain modifications, our old Rules 392 to 455, which, as appears from a note in Mr. Belchambers' book, were passed in order to supply a want in the old Code (Act VIII of 1859), which contained no rules applicable to sales otherwise than in the ordinary course of execution, *i.e.*, after attachment (*Denonath Rukhit v. Mutty Lal Pal*, 1 Hyde 158).

On an application made under Act X of 1877, s. 223 (c), for an order that a decree in the usual form for an account and sale in a mortgage suit should be sent to Dacca for execution as to such of the properties comprised in the mortgage as were at Dacca; it was held that the rules as to sales in that act were inapplicable to sales by the Registrar (*Suit 335 of 1876, Sonatun Dass v. Pertap Chunder Dhur*, Minute Book, March 21st, 1878, Pontifex, J.).

A number of the sections in the Transfer of Property Act (IV of 1882), have now been embodied in O. XXXIV of the present Code, the general effect of which, as stated in Mr. Justice Woodroffe's C. P. C., is that "the ordinary provisions of the Code apply to mortgage suits and the execution of mortgage decrees unless there be some special exception to the contrary." See also Gour's Transfer of Property Act, 1910 Edition, p. 1249, where it is stated, "and as regards the application of sections 304—319 (now O. 21, rr. 82—96), the sale being now held in execution of a decree passed under the Code, those rules become necessarily applicable to it." It is, however, essential, having regard to the long established practice of our Court as to sales by the Registrar, that we should retain our old rules and procedure in respect of such sales. These have therefore been retained and such of the old rules passed under section 104 of the Transfer of Property Act (old Rules 457 to 475, dated 31st July 1884) as relate to sales in mortgage suits have been embodied in this Chapter.

Sales after attachment will be held by the Sheriff (see Chapter XVII, Rule 30, and Chapter XXV, Rules 7 and 8, *ante*).

Other sales by the Court will be held by the Registrar under the rules in this Chapter.

See Partition Act IV of 1893, sec. 7. Where a sale is ordered under that Act by the High Court in its original jurisdiction, the procedure to be followed is the procedure of such Court in its Original Civil Jurisdiction for the sale of property by the Registrar.

1. An office copy of every decree or order for the sale of property by the Court otherwise than after attachment shall be filed in the Account Department of the Registrar's office.

Copy of
decree or
order for
sale to be
filed.

[Cal. 392.]

Sale to be
conducted
by the
Registrar.
By public
auction.
Exception.
[C. 393.]

2. Unless otherwise ordered, every such sale shall be by or with the approbation of the Registrar, and shall be made by public auction: except that where the property to be sold consists of negotiable securities or of shares in any Railway, Banking, or other public Company or Corporation, the Registrar shall be at

liberty to sell the same through a broker at the market rate of the day.

3. Every such sale shall be to the best purchaser that can be got for the same, provided the Registrar shall consider that a sufficient sum has been offered.

Sale to best purchaser offering a sufficient sum.

[C. 394.]

4. Where mortgaged property is to be sold, the mortgagee or the first mortgagee, and in other cases the plaintiff or party having the carriage of the general proceedings, shall have the carriage of the proceedings relating to the sale; but the Court or a Judge may, where necessary, commit the carriage of such proceedings to any other party.

Carriage of proceedings relating to the sale.

[C. 695.]

The rule that a party permitted to bid cannot have the conduct of the sale (*Donville v. Berrington*, 2 Yon. & C. Ex. 728; *Sidney v. Ranger*, 12 Sim. 118; *Ex parte McGregor*, 4 De G. & S. 608) has not been followed in this Court.

Permission to bid, without any resulting disability, can, however, only be obtained by the party having the conduct of the sale, subject to the conditions imposed by Rules 12 and 55, *post*. [B.]

5. All documents of title, relating to the property to be sold, in the possession or power of any of the parties, shall be produced to, and left with, the Registrar, and shall be subject to his directions, both as to their custody pending the sale, and their ultimate destination; such directions being subject to appeal to a Judge.

Documents of title to be left with, and disposed of by, the Registrar.

[C. 396.]

Appeal.

6. A notification of every intended sale by public auction under these rules shall be published in the *Calcutta Gazette*, and such other public papers, and as often as the Registrar shall direct, having regard to the nature and value of the property to be sold, and shall also, where the property to be sold is out of Calcutta, be proclaimed and published in the mode prescribed by the Code for the notification of sales in execution.

Mode of notifying sale of Calcutta property: of property out of Calcutta.

[C. 397.]

See Rule 17, *post*.

7. Every such sale shall be regulated by conditions in writing, which, where immoveable property is to be sold, shall be adapted to the state of the title to such property.

Sale to be regulated by conditions.

[C. 398.]

8. The notification and conditions of sale, together with, where immoveable property is to be sold, an abstract of title, or, in cases coming under rule 100 of

Notification, conditions of sale, abstract, etc.,

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by whom to
be prepared.

[C. 399.]

Notification
of sale.

[C. 400.]

Conditions
of sale.

[C. 401.]

Chapter XXXVI, a list of the title deeds shall be prepared by the attorney of the party having the carriage of the proceedings.

9. The notification shall specify the time and place of sale, and shall contain a description and particulars of the property, together with a statement that it is to be sold by or with the approbation of the Registrar pursuant to a decree or order of the Court, and of the manner in which it is proposed to lot the same. Where the property, or any portion of it, is to be sold subject to an incumbrance, the nature and amount of such incumbrance shall, as far as practicable, be also stated.

10. The conditions of sale shall be as few and simple as may be compatible with the nature of the property to be sold. Where the sale is subject to a reserved price, the fact of a reserved price having been fixed, but not the amount, shall be stated in the conditions. Where moveable property is to be sold, unless otherwise directed or agreed to by the parties, it shall be a condition that the whole of the purchase-money shall be paid to the Registrar at the time of the sale, and that upon such payment the sale shall become absolute, and delivery of the property sold given to the purchaser, but that in default of such payment the property shall be again immediately put up for sale. Where immoveable property is to be sold, unless otherwise directed or agreed to by the parties, it shall be a condition that not less than twenty-five per cent. of the purchase-money shall be deposited with the Registrar at the time of the sale, and that, unless so deposited, the property shall immediately be again put up for sale, and it shall be stated in the conditions that the purchaser shall, at his own expense, take such steps as may be necessary for the purpose of obtaining possession. Where immoveable property is to be sold in lots, and the same muniments relate to more than one lot, or where the same muniments relate to property a portion of which remains unsold, provision shall be made in the conditions for the destination of the original muniments, and for the production thereof and the furnishing of copies.

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rr. 11—13.

11. The notification, conditions, and abstract shall be left with the Registrar, and an appointment obtained from him to go through the same. Notice of such appointment shall be served on all parties entitled to attend. At such appointment, or an adjournment thereof, the notification, conditions and abstract shall be settled, the day, time, and place of the sale fixed, the days appointed for delivery of the abstract and of objections and requisitions to and on the title, and for payment into Court of the purchase-money, and the notification shall be signed and issued and directions given for its publication.

Settlement
of notification,
conditions, and
abstract.
[C. 402.]

12. Where a sale is ordered at the instance of a subsequent incumbrancer or of a mortgagor, or where a party having the carriage of the proceedings has obtained leave to bid, unless otherwise ordered, or unless dispensed with by the proper parties, a reserved price shall be fixed by the Registrar. The Registrar may also in any other case, in which it may be deemed necessary or desirable, fix a reserved price.

Reserved
price.
[C. 403.]

In a foreclosure suit a subsequent encumbrancer, who seeks to have the property sold without the plaintiff's consent, will be required not only to deposit a sufficient sum for the expenses of an abortive attempt to sell, but also to submit to a reserved bidding being fixed sufficient to cover the amount found due to the plaintiff (*Whitfield v. Roberts*, 5 Jur. N. S. 113; *Whitbread v. Roberts*, 7 W. R. 216) (13).

13. For the purpose of fixing a reserved price the Registrar may, on notice to the parties, direct a valuation or a survey and valuation to be made of the property to be sold. The same shall be made by a surveyor or other competent person, to be appointed by the Registrar, who shall certify the result under his signature, and shall deliver or transmit such certificate to the Registrar under a sealed cover, with the words on the cover, "Private, and to be opened only by the Registrar." The Registrar may, where he shall think fit, require the certificate to be verified by an affidavit or affirmation of the valuer. In that case the certificate shall be referred to without being annexed to, or filed with the affidavit or affirmation, which shall be so prepared as not to disclose the contents of the certificate. On the reserved price being fixed, the certificate shall be put up in a sealed cover and kept with the proceedings.

Valuation to
fix reserved
price.
[C. 404.]Mode of
certifying
and
verifying.

**CL. XXVII.
rr. 14—19.**

Reserved
price not to
be divulged.

[C. 405.]

Copy of
notification,
etc., to be
filed.

[C. 406.]

14. Unless otherwise ordered, the reserved price shall not be divulged to any persons either before, at, or after the sale.

15. On the notification and conditions being settled, a fair copy thereof and of the abstract shall be filed in the Account Department of the Registrar's office.

Copy of
notification
and condi-
tions with
translation
to be posted
up.

[C. 407.]

16. A copy of the notification and conditions of sale, with a translation thereof in the Bengali language, shall be posted up at the door of the Registrar's sale-room, on the day of the sale and for a week previously.

Notification
of sale of
property out
of Calcutta
to be
proclaimed
and publish-
ed in the
district in
which it is
situate.

[C. 408.]

17. Where immoveable property out of Calcutta, or any right, title, or interest in such property, is to be sold, two copies of the notification and of a translation thereof in the current language of the district in which the property is situate shall be transmitted by the Registrar to the Judge of the principal Court of the District in which the property is situate, with a letter requesting that one copy of the notification and translation may be affixed on the Court-house of the Judge, and that the other copy thereof may be affixed on the office of the Collector of the District, and that the intended sale may be otherwise proclaimed in the mode prescribed by the Code for the notification of sales in execution of decrees, and that the certificate that such notification has been duly made may be sent to this Court without delay.

See O. XXI, rr. 67 and 54 (2) of the Code.

When con-
ditions of
sale to be
published
and hand-
bills distri-
buted.

[C. 409.]

18. In any case in which it may be deemed desirable, and the value of the property to be sold shall admit of it, it shall be in the discretion of the Registrar to cause the conditions of sale, or any part thereof, to be published with the notification, and also, with a view to give greater publicity to the sale, to cause hand-bills to be prepared and distributed.

Attorney to
be present
at sale.

[C. 410.]

19. The attorney of the party having the carriage of the proceedings, or his principal clerk, shall be present at the sale.

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rr. 20—23.

20. On the day, and at the time and place appointed for sale, the notification and conditions of sale shall be read out in the English and Bengali languages, preparatory to the property being put up for sale.

Notification and conditions to be read out.

[C. 411.]

The name of each bidder shall be entered in the Registrar's note-book, and each bid offered by him shall be entered opposite his name.

Biddings to be entered.

21. Where there is no bid, or where the highest bid is below the reserved price (if any) or be deemed insufficient by the Registrar, he shall postpone the sale, and record the reason for such postponement in his note-book.

Postponement of sale for want of sufficient bidding.

[C. 412.]

Provided that where the highest bid is below the reserved price and where for any reason to be recorded by him the Registrar is of opinion that the same should be accepted, he may accept it subject to confirmation by a Judge.

Proviso. Acceptance of bid below reserved price.

[New.]

The proviso to this rule, the addition to Rule 22 and the additional paragraph to Rule 29, *post*, are new. The old rule prescribed that where the highest bid was below the reserved price the Registrar should postpone the Sale. No discretion was given. For many obvious reasons there should be such discretion subject to approval by the Court.

22. Where the highest bid is equal to or higher than the reserved price (if any), or is deemed sufficient by the Registrar, he shall, subject to the provisions of rule 23, make an entry in the note-book to the following effect :—

Form of entry in Registrar's note-book where property is sold.

[C. 413.]

“ I declare A. B. to be the purchaser of the property comprised in lot for the sum of Rs. .”

adding in a case within the proviso to rule 21 the words “ subject to confirmation by a Judge.”

23. Where, in the case of moveable property, the purchase-money or so much as may be payable at the time of the sale, or where, in the case of immoveable property, the amount to be deposited, is not at once paid to, or deposited with, the Registrar, the bid of the person who would otherwise have been declared the purchaser shall be rejected, and the property again immediately put up for sale; provided that at the request and risk of the party having the carriage of

Property to be again immediately put up for sale if deposit or purchase-money not paid.

[C. 414.]

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rr. 23—28.

the proceedings, such bid may be accepted, and time allowed to the purchaser to pay the amount payable by him.

Bidding paper.
[C. 416.]

24. The result of the sale shall also be set forth in a paper to be called "The Bidding Paper," (1) with particulars showing the lots which have been sold, and stating the names of the purchasers, and what sums have been received as deposits, and the balance remaining due in respect of each purchase. Where there is no bid for any lot, the words "no bidding" shall be written in the bidding paper opposite the number of the lot. Where the highest bid is deemed insufficient, the words "not sold" shall be written opposite the number of the lot. Where the property is sold, the highest bid shall be inserted opposite the number of the lot, and the purchaser shall write his full name opposite such entry, and shall add his address and quality. All notices thereafter served at the address so given shall be deemed to have been duly served.

To be signed by the purchaser.

Or by his agent as such.
[C. 416.]

25. A person purchasing as agent for another shall sign the bidding paper as such, giving the full name, address, and quality, both of himself and his principal. All notices thereafter served at either of the addresses so given shall be deemed to have been duly served.

Postponement of sale otherwise than under rule 21.
[C. 417.]

26. The Registrar, where unable to attend on the day appointed for the sale, or for other sufficient cause, or with the consent of the parties, may postpone the sale. The costs of a postponement rendered necessary by the Registrar's absence or the conduct of the party whose property is to be sold shall be costs in the suit. The costs of a postponement made at the request of a party shall be borne by him, or as shall be consented to by the parties.

Costs.

Where sale postponed, a new day to be fixed.
[C. 418.]
[Last sentence new.]

27. Where a sale is postponed, the Registrar shall be at liberty, without further order, to appoint a new day for the sale of the property, and to make any necessary alterations in the notification and conditions of sale, on notice to the parties where necessary.

Proceedings on a postponed sale or re-sale.
[C. 419.]

28. Where a sale is postponed, or where a re-sale is directed, a fresh notification shall be issued and published, and the proceedings down to the certificate of sale shall be similar to those on an original sale.

(1) See Form No. 3, App. J, *post*, p. 478.

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rr. 29—33.

29. The Registrar shall, as soon as possible after the sale, proceed to certify the result. Such certificate ⁽¹⁾ shall, within eight days after the sale, be filed by, and at the cost of, the party having the carriage of the proceedings. In case of his neglect, the purchaser of the property comprised in any lot shall be at liberty to file the same, and to retain the costs out of the purchase-money.

Certificate of
result of sale.
[C. 420.]

Costs.

In a case coming within the proviso to rule 21, the reasons for the Registrar's acceptance of the bid, subject to confirmation, shall be specially stated in the certificate of the result of the sale, which certificate shall not be binding without the order of a Judge to be obtained on summons. Unless otherwise ordered, the costs of obtaining the order shall be the costs of the person so accepted as the purchaser.

Where bid
below
reserved
price is
accepted.
[New.]

Costs.

30. A certificate of the result of a sale of moveable property shall not be liable to objection; but a certificate of the result of a sale of immoveable property, or a certificate upon any question as to title, or stating who are necessary parties to a transfer, or of the approval of a transfer, may be objected to like any other certificate or report of an officer.

Certificates
that may
be objected
to.

[C. 421.]

31. Where no application is made to discharge or vary a certificate of the result of a sale of immoveable property, within the time allowed for applying to discharge or vary a certificate or report of an officer, or where made, has been refused, such certificate, except as provided in rule 29 or 56, shall be deemed to be confirmed from and after the expiration of the time aforesaid, or from the date of such refusal.

Certificate
of sale
confirmed
by effluxion
of time.

[Cf. C. 422.]

See Chapter XXVI, Rules 89 and 90, *ante*, p. 278. For a case where a sale was set aside *even after confirmation*, the deficiency in area being large, 11 *higas* instead of 20: see *Bank of Bengal v. Akhoy Kumar Mukherjee* (1901), 6 C. W. N. 365.

32. A purchaser may, at his own expense, apply, on summons, for an order to confirm any certificate liable to be objected to under rule 30, before the expiration of the time allowed for applying to discharge or vary the same, and such order shall be made thereon as to the Judge shall seem fit.

Certificate
confirmed by
order.

[C. 423.]

33. Where the abstract of title is not delivered within the time specified in the conditions of sale, a

Application
to compel
delivery of

(1) See Form No. 4, App. J, *post*, p. 473.

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abstract.
[C. 424.]

summons may be taken out by the purchaser and served on the party conducting the proceedings, requiring him to deliver the abstract within a limited time. Such order shall be made thereon, and as to the costs of the application, as to the Judge shall seem fit.

Questions arising out of objections or requisitions.
Costs.

[C. 425.]

34. Any disputed question arising out of objections or requisitions by a purchaser may be brought by either party before the Registrar, who shall certify his opinion, and shall also certify by whom the costs ought to be paid.

Enquiry whether a good title can be made.

[C. 426.]

35. Where important questions of title are in dispute, either party may apply, on summons, for an order that it may be referred to the Registrar to enquire whether a good title can be made.

Costs of enquiry.

[C. 427.]

36. Where the title is found to be good on grounds not appearing on the abstract, the purchaser, unless otherwise ordered, shall be entitled to his costs of the enquiry. Where the title is found to be good on grounds appearing on the abstract, the purchaser, unless his objections have been frivolous and vexatious, or unless otherwise ordered, shall not be liable to pay more than his own costs of the enquiry.

Where sale set aside, purchaser entitled to receive back his deposit or purchase-money with costs.

[C. 428.]

37. Where a sale of immoveable property is set aside, the purchaser, unless precluded by the conditions of sale, or unless otherwise ordered, shall be entitled to receive back his deposit or purchase-money, and to be paid his costs, charges and expenses occasioned by his bidding for and being declared the purchaser of the property and of and incidental to the setting aside of the sale. Where there is a fund in Court standing to the credit of the suit, the purchaser's taxed costs, charges and expenses may be ordered to be paid out of it; but where there is no such fund, such costs, charges and expenses may be ordered to be paid by the party having the carriage of the proceedings, or otherwise as the Judge may think fit, without prejudice to the question by whom such costs, charges and expenses shall be ultimately borne and paid.

In the case mentioned in the note to Rule 81, the purchaser was allowed his purchase-money with interest at 6 per cent. from date of payment into Court, his costs, charges and expenses incurred by reason of his bidding for, and being declared the purchaser of the property, and of and incidental to the application to be discharged from his purchase.

The question of the costs of the survey made at his instance was left to the decision of the Taxing Officer.

Mr. Belchambers, in his note to the corresponding old rule, cites cases to show that the purchaser is also entitled to the costs of investigating the title. (*Attorney General v. Corporation of New York*, 8 Sim. 71; *Perkins v. Ede*, 16 Beav. 268, where the form of the usual order is given, and of obtaining counsel's opinion; *Barton v. Downes*, 4 Ir. Eq. Rep. 607.)

38. After a sale has been made, the purchaser may, where prepared to accept the title, apply for leave to pay the balance of the purchase-money into Court to the credit of the suit, or he may, where not prepared to accept the title, apply for leave to pay such balance into Court without prejudice to any question as to the title to the property. The application shall be made, on summons to the party having the carriage of the proceedings, and also to the party whose property has been sold. Such terms, as to the Judge shall seem fit, may be imposed upon the purchaser as to his paying interest upon the purchase-money, or waiving his right to the rents in the event of a good title being made to the property, up to the time when the question as to title shall be determined. The order obtained on an application under this rule shall also direct the Registrar to transfer and pay into Court to the credit of the suit the amount of deposit less his commission.

Application by purchaser for leave to pay his purchase-money into Court.
[Cf. C. 429.]

Old Rule 429 was "after a certificate of sale has become binding." We have now followed the wording of Bombay Rule 450 "after a sale has been made." The purchaser need not wait in order to pay in the balance.

See Rule 32, *ante*; application under that rule can be combined with one under this rule.

The last paragraph, which is new, is in accordance with our practice.

Interest.—Where the time allowed by the conditions has expired, even during the holidays, the conditions are binding and interest must be paid (*Ram Churn Law v. Jotindranath Sen* (1900), 5 C. W. N. xxii).

On an application to pay in the balance of purchase-money, it was contended for the purchaser that he was not liable to pay interest, inasmuch as the certificate of the result of the sale had not been filed by the plaintiff within the usual time (see old Rule 420, Rule 29, *ante*). It was pointed out, however, that the purchaser might have filed the certificate himself, and it was held the conditions of sale must be complied with and interest paid (*Alliance Bank v. Khotternath Dutt, Jenkins, J.*, 2nd December 1896).

39. Any party interested may apply, on summons, for such order or orders as it may be necessary to obtain for the purpose of compelling a purchaser who has neglected to pay his purchase-money in due time to comply with the conditions of sale. Such order or

Application by any other party against defaulting purchaser.
[C. 430.]

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rr. 39—45.**

orders may be made subject to the right (if any) of the purchaser to obtain an enquiry as to whether a good title can be made.

Direction
for invest-
ment of pur-
chase-money.
[C. 431.]

40. Where an application is made under either of the last two preceding rules for payment of the purchase-money into Court, the purchaser, or the attorney of the party having the carriage of the proceedings, may, at the same time, obtain directions for the investment of the purchase-money. Any subsequent application for that purpose shall be on summons, and, unless otherwise ordered, at the expense of the applicant.

Purchase-
money
to remain
uninvested
unless
otherwise
ordered.
[C. 432.]

41. Where the purchase-money is paid into Court without any directions as to investment, it shall, until otherwise ordered, remain uninvested.

Not to be
paid out
without
notice to the
purchaser.
[C. 433.]

42. The purchase-money, after being paid into Court, shall not be paid out or otherwise disposed of, except under an order to be obtained from a Judge in Chambers, on summons to the purchaser.

Purchaser
when deemed
to have
accepted the
title.
[C. 434.]

43. A purchaser of immoveable property, or of any right, title or interest in such property, who pays his purchase-money into Court without his right to object to the title being reserved, or who enters into possession, shall be deemed to have accepted the title.

When
entitled to
possession of
moveable
property.
[C. 435.]

44. On the purchase-money of moveable property being paid, the purchaser, unless otherwise provided for in the conditions of sale, shall be entitled to obtain immediate possession thereof, and where such property consists of negotiable securities or of any shares in any Railway, Banking, or other Public Company or Corporation, to have the same duly transferred to him.

Transfer of
securities
and shares.

Certificate
of sale where
obtainable.
[C]. C. 436,
470.]

45. Where immoveable property has been sold by the Registrar under O. XXXIV, r. 4 of the Code, or any subsequent rule of the said Order, or pursuant to a decree or order of Court in an administration suit or under the Partition Act, and the certificate of the result of the sale has been confirmed, the purchaser may, on the purchase-money being paid into Court, on application to a Judge in Chambers, obtain a certificate

of sale as evidence of the title to the property sold to him; and shall be entitled to a proper conveyance in which all necessary parties shall join as the Registrar shall direct. Unless otherwise ordered, all the costs of such conveyance shall be borne by the purchaser.

Conveyance.

It was the practice of this Court for a number of years to grant certificates in sales by a Receiver or Commissioner of Partition. (*Minatunessa Bibee v. Khatoonessa Bibee* (1894), I. L. R. 21 Cal. 479, Sale, J.) This practice was held to be wrong. (See Order of Fletcher, J., 4th April 1910, in Suit 808 of 1904, *Golam Hossain Cassim Ariff v. Fatima Begum*, where it was held that a certificate could only be given in the case of a Sale *by the Court* and not in sales *under an order of Court*, by e.g., a Receiver, Trustee or other person holding property.)

In this connection see sec. 65, and O. XXI, r. 94 of the Code.

In the cases mentioned in the rule the sale is *by the Court* through its officer in execution of its decree or order (see section 86 of the Code).

It may be pointed out that it would lead to a great saving of expense, delay and worry to the purchaser if provision could be made, if necessary, by legislation, for the granting of a certificate of sale, instead of a conveyance, in all cases of sales under order of Court. Where there are numerous parties, the execution of the conveyance by them all is sometimes a matter of great difficulty. Where a party dies the suit has to be revived, infants perhaps come in, the conveyance has to be settled by the Registrar on their behalf, etc. In one case a purchaser did not get his conveyance for over a year.

For Stamp on certificate of Sale, see cl. 18 of Sch. I of Stamp Act (II of 1899) same as conveyance.

A copy of the certificate is sent to the District Registrar of Assurances under s. 89 of the Registration Act (XVI of 1908), and also by request to the Collector.

46. Where immoveable property is sold by the Registrar otherwise than as mentioned in the last preceding rule, the purchaser shall not be entitled to a certificate of sale as evidence of the title to the property sold to him, but on the purchase-money being paid, he shall be entitled to a transfer in which all necessary parties shall join as the Registrar shall direct. Unless otherwise ordered, the purchaser shall bear his own costs of the transfer, including the costs of the stamps and of the engrossment.

No certificate of sale but transfer in other cases.

[New.]
[C. C. 437.]

47. Unless otherwise ordered, the transfer of immoveable property sold by the Registrar under rule 45 or 46 shall be prepared by the purchaser, and shall be sent for approval to the attorney of the party having the conduct of the proceedings.

Preparation and approval of such transfer.
[New.]

48. Where there is any improper delay in perusing and returning the transfer to the purchaser, he may apply, on summons, for the return thereof to him, and such order shall be made thereon, and as to costs, as to the Judge shall seem fit.

Improper delay in perusing and returning transfer.
Costs.

[C. 438.]

(Ch. XXVII.
R. 49—52.

Transfer to
be settled by
Registrar.
[O. 439.]

Certificate
of approval.
[Cf. O. 440.]

Proceeding
to procure
execution of
transfer.
[O. 441.]

49. Subject to appeal to a Judge, every transfer shall be settled by the Registrar, where the parties differ about the same, or where any of them be under any legal disability.

50. Where a transfer is settled by the Registrar, a certificate of approval shall be issued by him, or endorsed by him, upon such transfer.

51. Where any person certified by the Registrar to be a necessary party to a transfer is a minor, or otherwise under disability, or, being *sui juris*, neglects or refuses to execute the transfer, an order may be obtained, in the case of a person under disability, directing the Registrar to execute the transfer for him and in his name, and in other cases, directing the person to execute the transfer within a time to be fixed by the order and in default thereof directing the Registrar to execute the same for him and in his name. The application shall be on summons, and shall be supported by an affidavit of the facts, and it shall be shown that the person required to execute the transfer was certified by the Registrar to be a necessary party, and that the transfer has been approved of by such party or by the Registrar.

The Registrar cannot enter into any covenants for the person for whom he is executing. (Ram Chunder Dutt v. Dwarkanath Bysack (1889), I. L. R. 16 Cal. 330.)

Proceeding
to obtain
possession.
[Cf. C. 442.]

52. On the purchase-money for immoveable property being paid and the title accepted, the purchaser shall be entitled to proceed to obtain possession of the property purchased by him in like manner as the purchaser of immoveable property sold in execution after attachment, under the Code.

See O. XXI, rr. 95 and 96, and Chapter XVII, Rule 14, *ante*, p. 208.

The application for possession must show that the purchaser has obtained a certificate of sale. The practice is to annex a certificate of the Registrar to that effect. (See order of 17th May 1892, Trevelyan, J., in Suit 371 of 1888, Rookiney Cant Dass v. Sotis Chunder Sircar); or, where a conveyance has been obtained, this fact must be shown.

Where the property sold, and of which possession is required to be given, is situate beyond the O. O. C. J. the order directs that possession be delivered under the provisions of O. XXI, r. 95 (or 96 as case may be), by execution within the jurisdiction of the District Court of , and that a copy of the order and of the sale certificate with a certificate that possession has not been obtained within the jurisdiction of this Court be transmitted. (For examples see orders of 19th August 1887 in Suit 651 of 1881; 11th December 1897 in Suit 414 of 1894; 18th March 1898 in Suit 187 of 1896; and 28th August 1912 in Suit 511 of 1907.)

Ch. XXVII.
rr. 53—57.

53. No bidding shall be opened except with the consent of the purchaser, or unless it be shown that there has been fraud or misconduct in the management of the sale, or that the purchaser by reason of being in a fiduciary position was disqualified from purchasing. Bidding not to be opened. Exception. [C. 443.]

54. A party to the suit may obtain leave to bid at the sale. Such leave, if not contained in the decree or order directing the sale, may be obtained on summons; but the costs of a separate application, unless otherwise ordered, shall be borne and paid by the applicant. Leave to bid. [C. 444.] Costs.

Leave to bid will not in general be given to an exor in an administration suit: *Geldard v. Rendall*, 9 Jur. 1085, and query whether to the Solicitor for the exor: *Coaks v. Boswell*, 11 App. Cas. 232.

Nor to a receiver: *Alvine v. Bond*, 1 Flan & K. 106; *Nugent v. Nugent* (1907), 2 Ch. 292; affirmed (1908), 1 Ch. 546. These were cases where the leave was refused to the Receiver to buy for himself. But liberty was given by this Court to a Receiver appointed in a suit in this Court, to apply to the Court of the Sub-Judge at Chapra for leave to bid at a sale in that Court, on behalf of the parties to his suit in order to prevent a sale at an under value (*Gunnesser Lal v. Khoobnara*, 3rd September 1886).

Nor to a guardian ad litem, nor to a trustee unless all the *ex. q. t.* who are *sui juris* consent and no other purchaser at an adequate price can be found. (Seton 7th Edition, Vol. 1, 331.)

Generally the Solicitor of a party who cannot buy is equally unable to buy on his own account (Seton 331); but where the client is at liberty to buy, his solicitor will not be disqualified from buying by the mere fact of his name appearing on the particulars. (*Quest v. Smythe*, 5 Ch. 551.)

55. Where a party having the conduct of the proceedings has obtained leave to bid, the costs of an infructuous sale, unless otherwise ordered, shall be borne and paid by him. Costs of infructuous sale when party conducting sale has leave to bid. [C. 445.]

56. Where a party to the suit, not having the conduct of the proceedings, without obtaining previous leave to bid is accepted as the purchaser, that fact, together with the circumstances under which he was allowed to bid, shall be specially stated in the certificate of the result of the sale. In every such case, such certificate shall not be binding without an order to be obtained on summons. Unless otherwise ordered, the costs of obtaining the order shall be the costs of the person so accepted as the purchaser. Special certificate where a party to suit bids without previous leave and is accepted as purchaser. Confirmation. Costs. [C. 446.]

57. An incumbrancer, not a party to the suit, may, at any time before the sale, apply, by motion in Court, to be made a party, or, without being formally made a Application of incumbrancer to be made a

Ch. XXVII.

rr. 57—62.

party to the
suit or to
join in the
sale.

[C. 447.]

Substitution
of name.

[C. 448.]

party, for leave to join in the sale; and such order shall be made thereon, and in protection of his rights, and as to costs, as to the Court shall seem fit.

See Transfer of Property Act, s. 57; and O. XXXIV, rr. 1 and 12 of the Code.

58. The name of a principal or sub-purchaser shall not be substituted for that of the person certified to be the purchaser, without an order to be applied for on summons. The application shall be supported by an affidavit, stating the facts; and where it is sought to substitute the name of the sub-purchaser for that of an original purchaser, the affidavit shall also show that there was no collusion or under-bargain between the purchaser and sub-purchaser before the certificate of sale was binding, or shall disclose the terms of the under-bargain, if any.

At a Registrar's sale A purchased on account of B who refused to complete, as his limit had been exceeded. A applied for leave to complete on his own account. Held, that this rule did not apply, but that in equity the substitution of name should be allowed (*Ram Churn Law v. Jotindra Nath Sen* (1900), 5 C. W. N. xxii).

Not allowed
after execu-
tion of
transfer or
grant of certi-
ficate of sale.

[C. 449.]

59. No order shall be made for the substitution of names under the last preceding rule, after the execution of a transfer to a purchaser, or the grant to him of a certificate of sale.

When
additional
price, if any,
to be paid
into Court.

[C. 450.]

60. Unless it shall appear that the purchase by a sub-purchaser was made after the certificate of sale had become binding, or, unless otherwise ordered, every order for the substitution of the name of a sub-purchaser for that of an original purchaser shall be made subject to the payment into Court, as part of the purchase-money, of any additional price obtained by the original purchaser from the sub-purchaser.

One
application
to be made
for the sub-
stitution of
names and
payment of
purchase-
money.

[C. 451.]

61. Application for the substitution of names under rule 58 may be made as part of the application for leave to pay the purchase-money into Court.

Extra costs
of obtaining
substitution

62. Unless otherwise ordered, all extra costs incurred in obtaining the substitution of names under

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rr. 62—65.

rule 58, beyond those of an ordinary application for payment of the purchase-money into Court, shall be borne by the principal, whose name is to be substituted for that of an agent, or by the sub-purchaser, whose name is to be substituted for that of an original purchaser.

63. The sale of property ordered to be sold by the Registrar by private contract shall be regulated by the foregoing rules, so far as they are applicable.

Sale by
private
contract.
[C. 454.]

64. Where any estate or share of an estate situate outside Calcutta has been sold by the Registrar in pursuance of a decree or order of the Court, such sale shall be notified by the Registrar to the Collector of the district in which such estate or share of an estate is situate after the sale shall have been confirmed.

Sale by
Registrar of
property out
side Calcutta
to be notified
to Collector
after
confirmation.
[C/. C. 456.]

65. The forms to be used under this Chapter are in Appendix J.⁽¹⁾

Forms.
[C/. C. 453.]

(¹) *Post*, p. 470.

**RULES UNDER THE TRANSFER OF PROPERTY
ACT, IV OF 1882, AND WITH REFERENCE
TO ORDER XXXIV OF THE CODE.**

**Application
under
section 83.
[C. 457.]**

**Payment
into Court of
costs and
expenses
under
section
83 or any
subsequent
section.
[C. 458.]**

**Order for
payment of
money into
Court under
section 83.
[C. 459.]**

**Service
of notice
under
section 83.
[C. 460.]**

**Notice of
payment
into Court
under O.
XXXIV of
the Code.
[C. 461.]**

**Application
for payment
of money
out of Court.
[Cf. C. 462.]**

Such
application
to be on

(¹) *Post*, p. 475.

behalf, the money was paid, or to his attorney, unless the Court shall think fit to dispense with such notice.

notice.

[C. 463.]

8. Unless otherwise ordered, wherever any notice or order is served under the Act or this Chapter, an affidavit in proof of such service shall be filed as soon as possible thereafter.

Affidavit of service of notice or order.

[C. 464.]

9. Where it shall appear that previous to any payment into Court under section 83 of the Act, or under O. XXXIV, r. 2 of the Code, or any subsequent rule of that Order a sufficient tender was made to, and refused by, the mortgagee, he shall not be allowed to obtain payment of the amount deposited in Court to meet his claim, without deduction of the fees and charges of the Accountant-General and the Bank, nor shall he be allowed his costs of obtaining such payment. Except as aforesaid, or where otherwise ordered, the mortgagee shall be allowed all costs properly incurred by him.

Costs of mortgagee.

[C. 465.]

Disallowances where tender refused.

10. Where through default on the part of the mortgagee it becomes necessary to obtain an enlargement of time under O. XXXIV, r. 3 or r. 8 of the Code, no interest shall be allowed for the enlarged time without a special order in that behalf.

Where interest to be disallowed.

[C. C. 466.]

11. On an application for payment of money out of Court, under section 83 of the Act, or O. XXXIV of the Code, by a mortgagee who has complied with the orders of the Court and the provisions of the Act and of the rules made in this behalf, so far as they relate to him, or apply to his case, and has, where required so to do, transferred the property and possession free from incumbrance, and caused such transfer to be registered, and accounted for the documents of title which were held by him, the Court shall make such order or orders as to it shall seem fit for the disposal of the capital sum and interest thereon, and of the fund for costs and expenses.

Order for payment of money out of Court.

[C. 467.]

12. Every final decree for foreclosure, directing that possession of the property be given to the mortgagee, shall be drawn up with a recital of the preliminary decree and the proceedings had thereunder, and with a full description of the property in a schedule at foot of or annexed to the decree.

Recital in final decree for foreclosure.

[C. C. 469.]

O. XXVIII.**r. 13-15.**

Order under
section 83,
how enforced.
[C. 471.]

13. Every enforceable order made under section 83 of the Act, may be enforced under the provisions of the Code and shall, for that purpose, be deemed to have been made in a suit instituted under the Code.

Report in
mortgage
suit to be
countersigned
by a Judge.

Period for
payment
from when
to run.

[C. 477.]

14. Every certificate or report of the Registrar or other Referee, stating what is due to a mortgagee in a mortgage suit shall, on being confirmed by effluxion of time or otherwise, be submitted in open Court to a Judge, in order that it may be countersigned by him and the period for payment under O. XXXIV, r. 2, 4 or 7 of the Code shall run from the date of such counter-signature, which shall be deemed to be a declaration of the amount under the provisions of the said rules.

Form.

[New.]

15. The form to which reference is made in this Chapter is in Appendix J.⁽¹⁾

⁽¹⁾ *Post*, p. 475.

CHAPTER XXIX.

RULES UNDER SECTION 51 OF THE SPECIFIC
RELIEF ACT, I OF 1877.

1. Every application under Chapter VIII of the Act shall be intituled in the matter of the Act and of the applicant, and be made by motion, and shall be supported and answered by affidavits, unless in lieu thereof, or in addition thereto, the Court shall direct oral testimony to be taken.

Application
under Chapter
VIII of the
Act.
[B. 530.]
[C. C. 478
and 482.]

Our old procedure was to apply in the first instance for a Rule nisi (e.g., see *In re Muttu Lall Ghose*, 19 Cal. 192; and, in a recent case, *Kesho Prasad Singh v. F. A. Slacke* and another (1911), 13 C. L. J.). This rule is taken from Bombay Rule 530, and see Chapter XX, Rule 3, *ante*.

It was held under the corresponding Bombay Rule that application by petition was wrong procedure (*Gull v. Taja Noora* (1908), 1. L. R. 27 Bom. at 812).

Under section 46 of the Act, the Court may, on the application, grant a Rule or alternative order.

2. Any rule granted on such application as aforesaid shall, unless the Judge otherwise orders, be made returnable on a day to be fixed therein: the provisions of Chapter XX shall *mutatis mutandis* apply to motions and rules issued under this Chapter.

Returnable
date, service,
etc., of rule
granted on
such applica-
tion.
[C. C. 479.]
[B. 531.]

3. Where cause is shown or answer made upon affidavit, putting in issue any material question of fact, the Court may adjourn the matter to some early day for hearing upon the testimony of witnesses to be examined in like manner as in a suit.

Adjourn-
ment for the
examination
of witnesses.
[C. 480.]

4. Where a matter is adjourned for hearing upon the testimony of witnesses, either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in a suit.

Summonses
to witnesses.
Procedure.
[C. 481.]
[B. 533.]

5. Unless otherwise ordered, every rule under section 46 of the Act shall call not only on the public servant, Corporation, or inferior Court, but also on any person other than the applicant who may be affected by the act to be done or forborne, to show cause.

Against
whom rule to
be taken out.
[C. 483.]

On any other person who may be affected.—Where objection was taken on the ground that the rule had not been served on a person who would undoubtedly be affected if the application were granted:—*Held* that the objection was fatal. "It was one of substance and not of mere form, for the principle has been recognised wherever writs of mandamus are issued, that if a right, title or interest in or to real property, is directly involved, all persons owning or claiming the same must as a rule be joined as parties" (*Kesho Prasad Singh v. F. A. Slacke and another, supra*).

CHAPTER XXX.

RULES UNDER THE GUARDIAN AND WARDS
ACT, VIII OF 1890.

Rules 1 to 10 are our old Rule 646 (a) to (k) passed on 24th August 1905. Rules 11 to 17 are from the Madras Rules. Some of the latter rules have been omitted as not being applicable to our procedure.

Title of proceedings.

[*Cf. C. 641*
(a) and *Mad.*
431.]

1. All proceedings under the Act shall be entitled in the matter of the Act and in the matter of the minor.

See note to clause 17 of the Letters Patent of 1865, *ante*.

Application for appointment of guardian.

[*M. 432.*]
[*Cf. C. 646*
(b).]

2. An application by any person, other than the Collector, for the appointment of a guardian, or for a declaration that a person is the guardian of a minor, shall be by original petition, to a Judge.

To a Judge.—See Chapter VI, Rule 11 (4), p. 143.

Guardian of the person.—According to Hindu Law, in the case of minors who have lost both parents, the nearest male kinsman should be appointed their guardian, the paternal kinsmen having the preference over the maternal, but the interest, well-being, and happiness of the minors ought to be the main and paramount consideration for the Court in selecting the guardian of the person of a minor (*Re Gulbai and another* (1907), I. L. R. 32 Bom. 50).

Contents of application.

[*C. 646* (c).]
[*M. 433.*]

3. The application shall, in addition to the particulars required by section 10 of the Act, state whether the minor is entitled to any property absolutely, or subject to the rights or interests of any other person, and whether any property is subject to any, and what, incumbrance; and shall specify all persons of the same degree of relationship as, or of nearer degree than, the proposed guardian, and where a female is proposed as guardian, the nearest male relation of the minor.

Any property.—On an application for the appointment of A as guardian of the person and of a portion of the property of the minor.—*Held* that the appointment should be as to all the property—with liberty under the circumstances of that case to relinquish a portion. (*In the matter of Kalika Nundun Tagore*, 12th July 1900, Sale, J.)

Where father of minor is living.

[*M. 434.*]
[*C. 646* (d).]

4. Where the father of the minor is living, and is not proposed as guardian, the application shall also state any facts relied on as showing that he is unfit to act as guardian of the minor, or that he consents to the application.

5. Where it is proposed to deal with any property of the minor in manner mentioned in section 29 of the Act, the grounds of the application, and the relief prayed, shall be stated shortly in the original petition, and it shall not be necessary to present a separate petition or application.

Where property of minor is proposed to be dealt with.

[M. 435.]

[C. 646(e).]

6. The declaration of the willingness of the proposed guardian to act may be written at the foot of, or annexed to, or exhibited with, the petition.

Declaration of willingness of proposed guardian.

[M. 436.]

[C. 646(f).]

7. Notice of the application shall be in Form No. 6⁽¹⁾ and shall be issued and served in manner prescribed for summons to a defendant. On the date fixed for the hearing, the application shall be set down before a Judge. The Court or Judge may also direct the petitioner to publish the notice in such newspaper or newspapers as it or he thinks fit, and shall direct such publication in any case in which the petitioner is the Collector, or is not a relation of the minor.

Notice of, and setting down, application.

[M. 437.]

[C. 646(g).]

8. Unless the Judge otherwise orders, a person appointed or declared to be guardian of the property of the minor shall give security, in the bond of himself and one or more sureties for the amount or value of the moveable property, and of twice the amount of the annual rents, profits, or other income of the moveable and immoveable property, to be received or accounted for by the guardian; and shall furnish the statement of the property and debts mentioned in sub-section (b) of section 34 of the Act, and shall pass his accounts once in every six months.

Security by guardian.

[M. 438.]

[Cf. C. 646

(h).]

Statement of property and passing accounts.

Security.—See Chapter XXXVIII, Rule 71, *et seq.*, *post*, p. 486.

Where an order is made appointing a person guardian subject to his giving security, the effect of the order is to suspend the acts of the guardian till he gives security, but as soon as an order is made under section 7 of the Act the infant becomes a minor, and remains a Ward until he attains the age of 21. (*Gopal Chunder Bose v. Ganesh Ch. Srimani* (1905), 4 C. L. J. 112.)

Section 34.—In a case which came up on appeal to this Court from the Mofussil it was held that the Summary powers created by section 34 of the Act, cease as soon as the minority of the ward ceases. Section 41 cannot be construed into giving the Court, by summary procedure, a power to order accounts to be rendered after the termination of the guardianship. (*Nabu Beperi v. Sheikh Mahomed* (1900), 5 C. W. N. 207.)

But our powers under these rules are larger, see Rule 13, *post*, and Rules 10 to 19 of Chapter XXI, *ante*, pp. 232 to 235, which by Rule 20 of that Chapter are made applicable to a guardian of a minor.

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rr. 8—12.

Order of
appointment
without
security.

[C. 646 (i).]

Where the Judge thinks fit to appoint a guardian without giving security, the order shall direct, unless otherwise ordered, that an undertaking shall be given by the guardian to furnish the statement above mentioned, and to keep a full and correct account of all monies and property of the minor, received or expended by the guardian on his behalf, and to file and prove the same in Court, whenever so required.

Directions
at the
hearing.

[M. 439.]

[C. 646 (j).]

9. At the hearing, the Judge may determine the amount to be allowed for the maintenance and education of the minor, and the amount, if any, to be allowed to the guardian as his remuneration, and may also give any special direction as to the powers to be exercised by the guardian.

Where
minor's
property is
subject to any
maintenance
or right of
residence.

[M. 440.]

[C. 646 (k).]

10. Where any person is entitled to maintenance out of the property, or to reside in any house of the minor, the Judge may fix the amount to be paid to such person for maintenance, or in respect of maintenance and residence, or give such directions with respect thereto as it thinks fit.

Applications
to deal with
immoveable
property of
a minor.

[M. 442.]

11. An application for leave to deal with immoveable property of a minor by way of sale, mortgage, lease, or otherwise, shall state concisely the substance of the order prayed for; and shall be supported by the affidavit of some disinterested and independent person, stating what, in his opinion, is the value of the property proposed to be dealt with, and the best manner of disposing thereof in the interest of the minor, and also by the affidavit of some person, acquainted with the circumstances of the minor, showing the necessity or advantage of the said disposition.

Discharge or
removal of
guardian.

[Cf. *Mad.*
445, 446.]

12. An application for the discharge or removal of a guardian appointed or declared by the Judge shall be made by summons. Except where the minor has attained his full age, the application shall also pray for the appointment of a guardian in place of the guardian to be discharged or removed. Notice of the application shall be given to all parties on whom notice issued on the original petition, and to such other persons as the Judge may think fit.

When not
to be
discharged.

13. Unless otherwise directed, a guardian shall not be discharged from his liabilities until he has filed and

passed his accounts, and has paid, into Court or as otherwise ordered, any balance which may be found to be due from him.

Ch. XXX.
rr. 12—18.
[Cf. Mad.
446.]

See Chapter XXI, Rule 20, *ante*, p. 235.

14. All persons to whom notice of the original petition for the appointment or declaration of a guardian was issued may, at any time during the minority of the minor, and without obtaining an order for this purpose; inspect and take copies of the said statement and accounts; and any person interested in the person and property of the minor may, at any time, apply by summons in Chambers, supported by an affidavit showing the nature of his interest, and the purpose for which the same is required, for leave to inspect and take copies of the said statement and accounts.

Inspection of
accounts.
[M. 447.]

15. Monies belonging to wards shall, unless otherwise ordered, be invested in Government securities or in such other manner as a Judge may direct.

Investment
of monies.
[M. 449.]

16. An allowance may be granted to a guardian in respect of any special work or service to be performed by him, other than work or service in connection with the custody or care of the person, or the general control and management of the property of the minor, and shall not exceed in amount the remuneration usually paid for the said work or service; and, except as aforesaid, no remuneration shall be allowed to a guardian.

Allowances
to guardians
[M. 450.]

17. The costs of any application with respect to the person or property of a minor may, where the application is for his benefit, be ordered to be paid out of the income of the property, or where that is insufficient, out of capital monies, or monies realised by sale or mortgage of any property of the minor authorised by a Judge for this purpose.

Costs.
[M. 451.]

RULES UNDER THE INDIAN LUNACY ACT, IV OF 1912.

18. Every application under section 38 of the Act shall be made to the Court by a verified petition stating—

Application
under section
38 of the Act.
[New.]

- (a) The age of the alleged lunatic, his position in life and residence,

Ch. XXX.
rr. 18—22.

- (b) The nature of his lunacy, and the time during which it is alleged he has been of unsound mind,
- (c) The persons who are his relatives and their residences,
- (d) The name of the person proposed as guardian of his person or manager of his property.
- (e) The nature of his property and the income thereof,

and shall be supported by the duly verified certificates of at least two medical practitioners and by an affidavit of fitness of the proposed guardian or manager.

Under the old Lunacy Act XXXIV of 1858 there used to be an enquiry before a Judge in Chambers who made a report to the Court.

Now, the application under section 38 will be to the Court. Notice of the inquiry will be returnable before the Court unless the Court makes an order under section 43.

The order made on the application under section 38 will usually direct the inquisition—

- (1) as to whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs,
- (2) as to the nature of the property belonging to the alleged lunatic,
- (3) as to the persons who are his relatives,
- (4) as to the time during which he has been of unsound mind, and
- (5) such other matters as to the Court may seem proper.

Other
application
under Ch. IV
of the Act.
[New.]

19. All other applications under Chapter IV of the Act shall be to the Court by verified petition stating the facts.

Notice under
section 40 of
the Act.
[New.]

20. The notice to be issued under section 40 of the Act shall be by service of a copy of the order upon the alleged lunatic and the other persons to be therein named, to whom, in the opinion of the Court, notice should be given.

Security and
filing of
accounts.
[New.]

21. Every manager appointed of the property of a lunatic shall, unless otherwise ordered, give security in such sum as the Court shall direct and shall file his accounts half-yearly.

Security.—See Chapter XXXVIII, Rule 71, *et seq.*, *post*, p. 436.

Accounts.—See Chapter XXI, Rule 20, *ante*, p. 235.

Form.
[New.]

22. The form to which reference is made in this Chapter is in Appendix J. (¹)

(¹) *Post*, p. 475.

CHAPTER XXXI.

RULES UNDER THE INDIAN COMPANIES ACT, 1913, BOTH FOR THE HIGH COURT AND THE COURTS SUBORDINATE THERETO.

The rules in this Chapter were framed before the passing of the Indian Companies Act, 1913, but as such Act was subsequently passed and will be in force when these rules come into operation, the rules have been modified so as to be brought into conformity with the Act. It will be found that Rules 6 to 22 are similar to the Reduction of Capital Rules framed under the English Companies (Consolidation) Act, 1908, but no attempt has been made to bring the winding-up rules Nos. 24 to 80 into conformity with the 221 rules framed under the English Statute and known as The Company (Winding-up) Rules, 1909. The winding-up rules here given are based upon the rules in force in Bombay and upon the Calcutta rules framed under Act XX of 1866. It is to be noted, however, that Rule 95 provides for the application (in cases not provided for by this Chapter) of the practice and procedure of the High Court of Justice in England so far as they are applicable and not inconsistent with this Chapter and the Act.

1. The following shall be used as general headings^{General headings (R. 613.)} in all cases under these rules relating to companies in the High Court and in the Courts subordinate thereto:—

A.—For proceedings before the Judge in Chambers or in Court:—

In the High Court of Judicature at Fort William in Bengal (or in the District Court of) (as the case may be).

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

B.—For all advertisements, notices and other proceedings not before the Judge in Chambers or in Court:—

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

C.—In cases where it is required, the words “and reduced” shall be added to the description of the company.

2. In the High Court all petitions shall be^{Presentation hearing petitions} presented, applications made to, and proceedings taken

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and of all
applications
and
proceedings.

Presentation,
etc., of
petitions,
etc.

[B. 614.]

under the direction of the Judge who may be sitting in Chambers for the time being: provided nevertheless that the Judge may refer any matter so brought before him into Court, or to any other Judge of the High Court. In the Courts subordinate to the High Court all petitions shall be presented, applications made to and proceedings taken under the direction of the Judge for the time being of the District Court within whose jurisdiction the principal office of the company may be situate.

General rules,
practice and
procedure
applicable to
proceedings
to reduce
capital.

[New.]

3. The rules of the Original Side of the High Court for the time being in force, and the general practice of that Court, including the course of procedure and practice in Chambers, shall apply as regards all proceedings in relation to the confirmation of any reduction of capital by the Court so far as may be applicable, except if and so far as by the Act or this Chapter otherwise provided.

Petition to
reduce
capital.

[New.]

4. The petition for an order confirming a special resolution for reducing the share capital of a company shall be presented to the Judge in Chambers.

Application
to dispense
with "and
Reduced."

[New.]

5. An application for an order dispensing with the addition of the words "and Reduced" may be made *ex parte* in Chambers at or after the presentation of such petition, provided the Judge may direct notice to be given of such application or adjourn the consideration thereof as he may think fit.

Proceedings
after
petition
presented.

[Cf. B. 618.]

6. Where a petition for an order confirming a special resolution for reducing the share capital of a company has been presented, application may be made *ex parte*, to the Judge in Chambers, for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the Judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to section 58 of the Act, and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in rules 7, 8, 11, 12 and 13 of this Chapter. The order may be in Form No. 1.

Cf. English Reduction of Capital Rule 6.

Advertise-
ment of
petition.

7. Notice of the presentation of the petition shall be published at such times and in such newspapers in

English and in the vernacular as the Judge shall direct, so that the first insertion of such notice be made not less than one month before the day of the date fixed, as mentioned in the last preceding rule. Such notice may be in Form No. 2. [B. 619.]

Cf. English Reduction of Capital Rule 7.

8. In cases within section 58 (1) of the Act the company shall, within such time as the Judge shall direct, file in Court an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in rule 7; and the nature and amounts of the debts due to them respectively, or in case of any debt payable on a contingency or not ascertained, or any claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt or claim. [B. 620.] *Affidavit as to creditors.* [New.]

Cf. English Reduction of Capital Rule 8.

9. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim which (were that date the commencement of the winding-up of the company) would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in Form No. 3. [B. 621.] *Form of affidavit.*

Cf. English Reduction of Capital Rule 9.

10. Copies of such list, containing the names and addresses of the creditors and the total amount due to them, but omitting the amounts due to them, respectively, or (as the Judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the offices of their attorneys and agents (if any), and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee. [B. 622.] *Inspection of list of creditors.*

Cf. English Reduction of Capital Rule 10.

11. The company shall, within seven days after the filing of such affidavit or such further time as the Judge may direct, file in Court a notice to the creditors of the company, stating the date fixed for the meeting of the creditors, and the place at which the same shall be held. [B. 623.] *Notice to creditors.*

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[B. 623.]

Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt for which such creditor is entered in the said list and the time (such time to be fixed by the Judge) within which, where he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company; and such notice shall be sent through the post in a registered letter addressed to each creditor at his last known address or place of abode, and may be in Form No. 4: provided that where any of the creditors of the company are residing out of British India, or where the names of any of the creditors are not known to the company, the Judge may direct notice to be given to them by advertisement in such papers and at such times as he may think proper.

Cf. English Reduction of Capital Rule 11.

Advertisement as to list of creditors.
[B. 624.]

12. Notice of the list of creditors shall, after the filing of the affidavit mentioned in rule 8, be published at such times and in such newspapers as the Judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of the creditors may be inspected, and the time within which creditors of the company whose names are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their attorneys (if any) to the attorney of the company; and such notice may be in Form No. 5.

Cf. English Reduction of Capital Rule 12.

Affidavit as to result of rules 11 and 12.
[B. 625.]

13. The company shall, within such time as the Judge shall direct, file in Court an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in rules 11 and 12 required to be sent in, stating the result of such notices, respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices, respectively, and the amounts of such

debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in Form No. 6.

Cf. English Reduction of Capital Rule 13.

14. Where any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim, the company shall, where the Judge thinks fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named being not less than fourteen clear days after such notice, and being the time appointed by the Judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in rule 11, and may be in Form No. 7.

Proceedings
where claim
not admitted
[B. 626.]

Cf. English Reduction of Capital Rule 14.

15. Such creditors as come in to prove their debts or claims in pursuance of such notice as is mentioned in rule 14 shall be allowed their costs of proof against the company and such costs shall be added to their debt; or the said creditors may be answerable for costs in the event of their proof not being established.

Costs of proof
[B. 627.]

Cf. English Reduction of Capital Rule 15.

16. The result of the settlement of the list of creditors shall be stated in a certificate which shall be signed by the Judge, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 59 of the Act, and the debts or claims (if any) the full amount of which is

Certificate
by the Judge
as to
creditors.
[B. 628.]

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not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 59 of the Act and the person to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

Cf. English Reduction of Capital Rule 16.

Petition
to come on
for hearing.
[B. 629.]

17. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition shall be set down for hearing, in the ordinary course, upon a *præcipe* addressed to the Registrar by the petitioner or his attorney, to have the petition set down for hearing.

Advertis-
ment of
hearing.
[B. 630.]

18. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers, in English and in the vernacular, as the Judge shall direct. Such notices may be in Form No. 8.

Cf. English Reduction of Capital Rule 19.

Who may
appear.
[B. 631.]

19. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined or been secured in manner provided by section 59 of the Act, and who has not before the hearing consented to the proposed reduction of capital, may, where he thinks fit, upon giving two clear days' notice to the attorney of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

Cf. English Reduction of Capital Rule 20.

Costs of ap-
pearance.
[B. 632.]

20. Where a creditor who appears at the hearing under the last preceding rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of whose debt or claim has not been inquired into and adjudicated upon under

section 59 of the Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Cf. English Reduction of Capital Rule 21.

21. Where the petition comes on to be heard, the Judge may, where he shall so think fit, give such directions as may seem proper with reference to the securing, in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, where the Judge shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Directions at
hearing.
[B. 633.]

Cf. English Reduction of Capital Rule 22.

22. Where the Judge makes an order confirming a reduction, such order shall give directions in what manner and in what newspapers, in English and the vernacular, and at what times notice of the registration of the order and of such minute, as is mentioned in section 61 of the Act, is to be published; and (unless it shall have dispensed altogether with the addition of the words "and Reduced" or shall then dispense with the further use thereof) shall fix the date until which the words "and Reduced" are to be deemed part of the name of the company as mentioned in section 57 of the Act.

Order con-
firming
reduction.
[Cf. B. 634.]

Cf. English Reduction of Capital Rule 23.

23. Where the Judge should think fit to require the company to publish the reasons for the reduction of its capital or any other information with regard thereto, or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and in the vernacular, as the Judge shall think proper.

Publication
of reasons
for reduction,
etc.
[B. 635.]

24. Every petition for the winding-up of any company by the Court, or subject to the supervision of

Petition to
wind up
company

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Advertis-
ment of
petition.

[B. 636.]

the Court, shall be advertised 14 clear days before the hearing as follows :—

- (1) In the case of a company whose registered office, or where there shall be no such office, then whose principal or last known principal place of business is, or was, situate within the local limits of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta, once in the *Calcutta Gazette*, and once at least in two English daily newspapers and two vernacular newspapers published in Calcutta.
- (2) In the case of any other company once in the *Calcutta Gazette* and once at least in two local newspapers, or where there should be none such, in two newspapers circulating in the district where such registered office or principal or last known principal place of business, as the case may be, of such company, is or was situate, and also by proclamation affixed to the walls of the Court House.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner and of his attorney (if any). (Form No. 9.)

Service of
petition.

[B. 637.]

25. Every such petition shall, unless presented by the company, be served at the registered office (if any) of the company, and where there is no registered office, then at the principal or last known principal place of business of the company where any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business or by being served on such member or members of the company as the Judge may direct; and every petition for the winding-up of a company subject to the supervision of the Court shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company. So also every petition for the compulsory winding up of a company shall be served upon the liquidator

(if any) who may have been appointed to act in a voluntary winding-up or in a winding-up under supervision, as the case may be.

26. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto in Form No. 10: such affidavit shall be made by the petitioner or by one of the petitioners, where more than one, or in case the petition is presented by the company by some director, secretary or other principal officer thereof and shall be made and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements, in the petition. Where the petition is presented by a corporate body, other than the company itself, the affidavit shall be made by some director, secretary or other principal officer of such corporate body: Provided that where the petitioner is by reason of absence or for other good cause unable to verify such petition the same may be verified by any person duly authorised by him in that behalf or deemed by the Court competent to verify the same.

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Affidavit
verifying
petition.
[B. 638.]

27. Every contributory or creditor of the company shall be entitled on application to the Court or to the attorney of the petitioner to be furnished with a copy of the petition within twenty-four hours after requiring the same on payment to the Court of the usual Court-fees or to the attorney of the usual charges.

Copies of
petition to
be supplied.
[B. 639.]

28. Where a petition to wind up has been presented the petitioner shall not be entitled to have it dismissed, where any creditor appears and proves his debt and is desirous of taking advantage of the petition.

Petition not
to be dis-
missed, if any
creditor
desires to
take
advantage
of it.
[B. 640.]

29. Every order for the winding-up of a company by the Court, or subject to its supervision, shall within twelve days after the date thereof be advertised by the petitioner once in the *Gazette of India* and once in the *Calcutta Gazette*, and otherwise as the Court may direct and shall be served upon such person (if any), and in such manner as the Court may direct. (Forms Nos. 11, 12 and 13.)

Order to
wind up
company.
Advertise-
ment and
service of
petition.
[B. 641.]

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Proceedings
on orders.
[B. 642.]

30. Within ten days after any order for the winding-up of a company has been sealed, a summons at Chambers shall be taken out by the petitioner to proceed with the winding-up of the company, and in default thereof such summons may be taken out by any other person interested in the winding-up to whom the Judge may think fit to give the conduct and prosecution of the said order, and in either case such summons shall be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, where the Judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts and for the list of contributories to be brought in and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, where necessary, by further summons, and any such directions as aforesaid may be given, added to, or varied, at any subsequent time as may be found necessary.

Appointment
of official
liquidator.
[B. 643.]

31. The Judge may appoint a person to the office of official liquidator without any previous advertisement or notice to any party or may fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

Advertisement
as to
appointment.
[B. 644.]

32. Where a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed. (Forms Nos. 14 and 15.)

~~(33. Every official liquidator shall give security by~~
Every Official Liquidator, where ordered to
give security, shall do so by entering into a
Bond with one or more sufficient sureties, or
by depositing Government securities in such sum
as the Court may approve. (Sub. 4, 1914, 1915)
in Cal. 404, 1915, M. E. 1. 749.)

official liquidator is to file his accounts of receipts and payments and shall direct that all monies to be received shall be paid into Court or into the Bank of Bengal or branch thereof nearest to the principal place of business of the company, or in the case of a District Court into that Court, immediately after the receipt thereof to "the account of the official liquidator of the company" and an account shall be opened there accordingly, and if the money is payable into the Bank of Bengal or branch thereof an office copy of the order shall be lodged at the Bank of Bengal or branch thereof as aforesaid. (Form No. 18.)

35. Where an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the Registrar or the District Judge, as the case may be.

Certificate of
security
given.
[B. 647.]

36. The official liquidator shall on each occasion of passing his account and also wheresoever the Judge may so require, satisfy the Judge that his sureties are living, and resident in British India and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

Fresh
security
when
required.
[B. 648.]

37. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct immediately after he has been appointed and has given security. (Form No. 19.)

Advertise-
ment of
appointment
made.
[B. 649.]

38. Where it is desired to appoint provisionally an official liquidator an application for that purpose may, at any time after the presentation of the petition for winding up the company, be made by petition without advertisement or notice to any person unless the Judge shall otherwise direct; and such provisional official liquidator may, where the Judge shall think fit, be appointed without security. (Form No. 20.)

Provisional
official
liquidator.
[B. 650.]

39. In case of the death, removal, or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same.

Vacancy in
office of
official
liquidator.
[B. 651.]

40. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, con-

Accounts.
[B. 652.]

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tinue, complete, and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the Judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and the rules in this Chapter.

Remunera-
tion.
[B. 653.]

41. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the Judge may from time to time direct, and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter as the Judge may think fit, and the sum may be so fixed as to cover the expenses of the employment of assistants or clerks by the official liquidator, and also his office rent, stationery, etc., unless the Judge shall otherwise order. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any) and supported by such evidence as the Judge shall require, nevertheless the Judge may from time to time allow any sum he may think fit to the official liquidator on account of the salary or remuneration to be thereafter allowed.

Passing
accounts.
[B. 654.]

42. The accounts of the official liquidator shall be filed at such time as may from time to time be ordered by the Judge, and shall, upon notice to such persons (if any) as the Judge shall direct, be passed or verified as may be ordered.

Joint
official
liquidators.
[B. 655.]

43. Where joint official liquidators are appointed the above rules relating to the official liquidators shall be applicable *mutatis mutandis*.

Proof of
debts.
Advertisse-
ment for
creditors.
[B. 656.]

44. For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims an advertisement shall be issued at such time as the Judge shall direct, and such advertisement shall fix the time for the creditors to send their names and addresses and the particulars of their debts or claims and the names

and addresses of their attorneys (if any), to the official liquidator, and appoint a day for adjudicating thereon. (Form No. 21.)

45. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified. Attendance
of creditors.
[B. 657.]

46. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company and he shall make out and file in Court a list of all debts and claims sent in to him, distinguishing which of the debts and claims or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence and which of them in his opinion ought to be proved by the creditors, and he shall make and file, prior to the time appointed for adjudication, an affidavit (Forms Nos. 22 and 23) setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief. List of debts.
[B. 658.]

47. At the time appointed for adjudicating upon the debts and claims or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance. (Form No. 24.) Allowance
of debts.
[B. 659.]

48. The official liquidator shall give notice (Form No. 25) to the creditors whose debts or claims have not been allowed upon his affidavit that they are required to come in and prove the same (Form No. 26) by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement Proof of
debts.
[B. 660.]

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or the adjournment (as the case may be) for adjudicating upon such debts and claims.

**Estimation
of value of
debts and
claims.**

[*Cf. B. 661
(end).*]

49. The value of all debts and claims against the company shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company.

**Dividends
payable,
principal
and interest.**
[*B. 662.*]

50. Creditors whose debts and claims carry interest, and are allowed, shall be entitled to receive dividends upon what was due for principal and interest at the date of the winding-up. In the event of there being a surplus the dividends payable to such creditors shall be applied, firstly, towards payment of the interest, and, secondly, in reduction of the principal due to them.

Interest may be allowed on all claims in respect of which it is recoverable as damages.

Cost of proof.
[*B. 663.*]

51. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof which will be added to the debt.

**Judge's
certificate
of debts.**
[*B. 664.*]

52. The result of the adjudication upon debts and claims shall be in the form of a certificate (Form No. 27) to be signed by the Judge from time to time as convenience may require, and such certificate shall state whether the debts or claims are allowed or disallowed and whether allowed as against any particular assets or in any other qualified or special manner. (Form No. 28.)

**List of con-
tributories.**
[*B. 665.*]

53. The official liquidator shall, with all convenient speed, after his appointment, or at such time as the Judge shall direct, make out and file in Court a list of the contributories of the company; and such list shall be verified by the affidavit (Forms Nos. 29 and 30) of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory and distinguish the several classes of contributories. And such list may from time to time by leave of the Judge be varied or added to by the official liquidator. (Form No. 31.)

**Notice of
appointment
to settle.**

54. Upon the list of contributories being filed in Court, the official liquidator shall obtain an appoint-

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ment for the Judge to settle the same, and shall give notice (Form No. 32) in writing of such appointment to every person included in such list, and stating in what character and for what number of shares or interest such person is included in such list, and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served (Forms Nos. 33 and 34) four clear days before the day appointed to settle such list or such variation or addition. (Forms Nos. 35 and 36.)

55. A list of contributories as the same shall have been settled (Form No. 37) by the Judge shall from time to time (where the Judge shall so order) be drawn up by the official liquidator and signed by the Judge for the purpose of stating the result of such settlement down to any particular time, or as to any particular person or stating any variation of the list.

Judge's
certificate.
[B. 667.]

56. Any moveable or immoveable property belonging to the company may be sold with the approbation of the Judge in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, where the Judge shall so direct, by the official liquidator, in which case the conditions or contracts of sale shall be settled and approved of by the Judge unless he shall otherwise direct; and unless on account of the small amount of the purchase-money or other cause it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase-money shall be paid to him, all conditions and contracts of sale shall provide that the purchase-money shall be paid by the respective purchasers into Court or into the Bank of Bengal or the branch thereof nearest to the principal place of business of the company to the account of the official liquidator of the company, or in the case of a District Court, into that Court. (Form No. 38.)

Sales of
property.
[B. 668.]

57. Every application to the Judge to make any call (Form No. 39) on the contributories or any of them, for any purpose authorized by the Act, shall be made by summons (Form No. 40) in Chambers, stating the proposed amount of such call; and such summons shall

Call.
Summons
for call.
[B. 669.]

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rr. 57-60.

be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call, or if the Judge shall so direct, notice of such intended call may be given by advertisement (Form No. 41) or such other public notification as the Judge in his discretion may think sufficient.

*Service of
order.*
[B. 670.]

58. Where any order (Form No. 42) for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice (Form No. 43) from the official liquidator specifying the amount of balance due from such contributory, having regard to the provisions of the Act in respect to such call; but such order need not be advertised unless for any special reason the Judge shall so direct.

*Proceedings
under order.*
[B. 671.]

59. At the time of making an order for call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment or upon a summons in Chambers to enforce payment of the call duly served and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them, respectively. (Forms Nos. 44, 45 and 46.)

*Payment of
monies and
deposit of
securities.
Default of
payment
into Bank.*
[B. 672.]

60. Where any official liquidator shall not pay all the monies received by him into Court or into the Bank of Bengal or the branch thereof nearest to the principal place of business of the company, or in the case of a District Court into that Court, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the Judge shall have otherwise directed, such official liquidator shall be charged in his account with rupees ten for every thousand rupees and a proportionate sum for any larger amount retained in his hands beyond such

period for every seven days during which the same shall have been so retained, and the Judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

61. All bills, hundis, notes and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in Court or in the Bank of Bengal or the branch thereof nearest to the principal place of business of the company, or in the case of a District Court in that Court, for the purpose of being presented for acceptance and payment, or for payment only, as the case may be. (Form No. 38.)

Bills, etc.,
to be deposited
in Bank.
[B. 673.]

62. All orders for payment of calls, balances or other monies due from any contributory or other person shall direct the same to be paid into Court or into the Bank of Bengal or the branch thereof as aforesaid or in the case of a District Court into that Court, to the account of the official liquidator of the company unless on account of the smallness of the amount or other cause, it shall having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator; provided that where any such order has been made directing payment of a specific sum into Court or into the Bank of Bengal or a branch thereof, or in the case of a District Court into that Court, as aforesaid, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice for payment of the same sum to the official liquidator.

Calls, etc.,
to be paid
into Bank.
[B. 674.]

63. At the time of the service of any order for payment into Court or into the Bank of Bengal or branch thereof or into a District Court as aforesaid, the official liquidator shall give to the party served a notice in Form No. 47, for the purpose of informing him how the payment is to be made, and before the time fixed for such payment the official liquidator shall furnish the Registrar or the Secretary and Treasurer of the

Notice as to
payment into
Bank.
[B. 675.]

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rr. 63-67.

Bank of Bengal, or the Agent or Manager of the branch thereof as aforesaid, as the case may be, or in the case of a District Court the Nazir thereof, with a certificate in Form No. 48 to be signed by such Registrar or Secretary and Treasurer or Agent or Manager or Nazir as the case may be and delivered to the party paying in the money therein mentioned.

Affidavit of
 non-pay-
 ment.

[B. 676.]

64. For the purpose of enforcing any order for payment of money into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, an affidavit of the official liquidator in Form No. 49 shall be sufficient evidence of the non-payment thereof.

Title of
 account in
 Bank.

[B. 677.]

65. All monies, bills, hundis, notes and other securities paid and delivered into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be placed to the credit or account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out
 of securities,
 payment out
 and invest-
 ment of
 monies.

Requests
 and cheques.

[B. 678.]

66. All bills, hundis, notes and other securities delivered into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be delivered out upon a request signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court, or the Registrar under the orders of the Judge, and monies placed to the account of the official liquidator shall be paid out upon such cheques or orders signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court, or by the Registrar under the orders of the Judge. (Form No. 38.)

Investment.

[B. 679.]

67. All or any part of the money for the time being standing to the credit of the account of the official liquidator in Court or at the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court in that Court, and not immediately required for the purposes of winding-up, may be invested in the purchase of Government Promissory Notes in the name of the official liquidator. All investments of monies in Court or in the Bank of Bengal or a branch thereof as aforesaid shall be made upon a request (Form No. 50) signed by the official liquidator and countersigned

by the Judge or one of the Judges of the Court or by the Registrar under the orders of the Judge; and all investments of monies standing to the credit of the account of the official liquidator in a District Court shall be made upon a request (Form No. 51) signed by the official liquidator and addressed to such Court: such request, respectively, shall be sufficient authority for debiting the account with the purchase-money: and such Government notes shall be retained by or deposited with the Court or the Bank of Bengal or by or with the said District Court in the name and on behalf of the official liquidator, and such notes shall not afterwards be sold or transferred or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court or by the Registrar under an order made by the Court or the Judge.

68. All dividends and interest to accrue due from any such notes shall from time to time be received by the Court or the Bank of Bengal (under a power of attorney to be executed by the official liquidator) and placed to the credit of the account of such official liquidator, and when any of such notes shall become payable the same shall be renewed or the principal and interest due thereon be received and placed to the credit of the account of the official liquidator. Receipt of dividends.
[B. 680.]

69. Where the Court or a Judge shall direct a meeting of the creditors or contributories of the company to be summoned under section 239 of the Act, the official liquidator shall give notice (Form No. 52) in writing seven clear days before the day appointed for such meeting, to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which the Court or Judge desires to ascertain the wishes of the creditors or contributories, or where the Court or Judge shall so direct, such notice may be given by advertisement in the daily papers, in which case the object of the meeting need not be stated and it shall not be necessary to insert such advertisement in the *Calcutta Gazette* or the *Gazette of India*. (Form No. 53.) Meetings of creditors or contributories.
Notice.
[B. 681.]

70. The votes of the creditors or contributories of the company at any meeting summoned by the direction Votes.
[B. 682.]

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rr. 70-74.

[*New.*]

of the Court or a Judge may be given either personally or by proxy; but no creditor shall appoint (Form No. 54) a proxy who is not a creditor of the company, whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company. The Chairman of the meeting shall certify the result thereof. (Form No. 53.)

Memoran-
dum as to
calling
meeting.
[*B. 683.*]

71. The direction of the Judge for any meeting of creditors or contributories under section 140 or 193 of the Act, and the appointment of a person to act as Chairman of any such meeting shall be testified by a memorandum (Form No. 55) signed by a Judge, or by the Registrar under the direction of the Judge. (Form No. 53.)

Direction or
sanction of
the Judge
to bills of
exchange,
etc.
[*B. 684.*]

72. The sanction of the Judge to the drawing, accepting, making and endorsing of any bill of exchange, hundi or promissory note by any official liquidator shall be testified by a memorandum (Form No. 56) on such bill of exchange or promissory note signed by the Judge or one of the Judges of the Court, or by the Registrar under the direction of the Judge.

Compromise.
[*B. 685.*]

73. Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the company (Form No. 57) shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person: and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum (Form No. 58) signed by a Judge, or by the Registrar under the orders of the Judge, on the agreement or compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

Other cases.
[*Cf. B. 686.*]

74. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator under the powers conferred on him by section 179 shall be obtained upon petition verified by affidavit and an order (Form No. 59) shall be drawn up thereon, unless the Judge shall otherwise direct.

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 rr. 75—82.

75. Every application under sections 212 (2) and 215 of the Act shall be made by petition or, where the Court shall so direct, by summons in Chambers, and every application under section 237 of the Act shall be made by petition.

Application to the Court under sections 181, 185 and 216 of the Act. Application how made. [B. 687.]

76. Where an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *Calcutta Gazette* and in such other newspaper or newspapers and for such number of times as may be directed. The Judge, however, may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

Insertion of advertisements. [B. 688.]

77. Where an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order shall file the same in Court, and serve a copy thereof on the official liquidator. The person other than the official liquidator filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Judge shall otherwise direct.

Affidavits. Filing and office copies of affidavits. [B. 689.]

78. A register shall be kept by the Court of all proceedings in each matter in a book set apart for that purpose.

Register of proceedings. [B. 690.]

79. All the above rules relating to official liquidators shall, so far as the same are applicable and subject to the directions of the Court or the Judge in each case, apply to provisional liquidators.

Provisional official liquidator. [B. 691.]

80. No order to the prejudice of contributories or creditors shall be made *ex parte* on the application of the official liquidator and every person for the time being on the list of contributories of the company filed by the official liquidator, and every person having a debt or claim against the company allowed by the Judge shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled upon payment of the costs occasioned thereby to have

Attendance and appearance of parties. [B. 692.]

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rr. 80—84.

notice of all such proceedings as he shall by written request desire to have notice of, but if the Judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs or a gross sum in lieu thereof to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

**Appointment
of represen-
tative party.**
[B. 693.]

81. The Judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit to represent before him at the expense of the company all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors or in and about any other proceedings before him relating to the winding up of the Company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall unite in employing the same attorney to represent them.

**Appearance
to be filed
before
attendance.**
[Cf. B. 694.]

82. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he has filed an appearance with the Registrar. A book to be called the Appearance Book shall be kept in which all such appearances shall be entered. (Form No. 60.)

**Service of
summons,
notices, etc.**
**Service how
effected.**
[B. 695.]

83. Services upon contributories and creditors shall be effected, except where personal service is required, by sending the notice, or a copy of the petition, summons or order or other proceedings, through the post in a registered letter, addressed to the attorney (if any) of the party to be served or otherwise to the party himself, if a contributory, to his last known address or place of abode, and if a creditor, to the address given by him pursuant to rule 44 and such notice or copy, summons, order, or other proceedings shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office, and notwithstanding the same may be returned by the Post Office.

**Name of
person
incomplete.**
[B. 696.]

84. No service under these rules shall be deemed invalid by reason that any name other than the surname of the person (where the said person is a

European) or any name other than the final name ordinarily used by the person (being other than a European) on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the Court is satisfied that such service is in other respects sufficient.

85. Applications for the transfer of winding-up proceedings either from the High Court to a District Court, or from one District Court to another, as the case may be, shall be made by petition which shall be filed in Court. Upon the filing of such petition as aforesaid the Judge shall give such orders and directions and direct that an advertisement thereof be made as the nature of the case may require, and shall fix a date for the hearing of such petition.

Transfer of winding-up from High Court to District Court under sections 216 and 219 of the Act.
[B. 697.]

86. Where the petition in the last preceding rule has been heard and an order thereon passed by the Court, the Court shall thereupon make an order (Forms Nos. 61 and 62) for transferring the winding-up proceedings.

Order for transfer.
[B. 698.]

87. Upon the termination of the proceedings for the winding-up of any company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account and the balance (if any) due on the final account shall be certified by the Judge, and upon payment by the official liquidator of the balance (if any) in such manner as the Judge shall direct, the recognisances entered into by the official liquidator and his sureties may be vacated. (Form No. 63.)

Termination of winding-up proceedings.
[B. 699.]

88. Where the official liquidator has passed his final account and the balance (if any) due thereon has been paid in such manner as the Judge shall direct, the official liquidator shall in case the company has not been already dissolved, apply to the Judge for an order that the company be dissolved from the date of such order. (Form No. 64.)

Dissolution of company.
[B. 700.]

89. Where the proceedings for winding up any company have been completed, the file of proceedings

Deposit of proceedings in Court.

**Ch. XXXI.
rr. 89—96.****[B. 701.]**

and the book containing the official liquidator's account shall be deposited in the records of the Court.

**Duties of
attorney of
official
liquidator.**

[B. 702.]

90. The attorney, or, in Courts other than the High Court, the vakeel, of the official liquidator shall conduct all such proceedings, as are ordinarily conducted by attorneys of the High Court, or by vakeels in such other Courts; and where the attendance of his attorney or vakeel is required on any proceeding in Court or Chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his attorney or vakeel, or the Court shall direct him to attend.

**Attorney's
fees.**

[Cf. B. 704.]

91. Attorneys and vakeels shall be entitled to charge and be allowed the fees set forth and referred to in the table of fees in Chapter XXXVI, so far as they are applicable, unless the Court shall otherwise specially direct.

**Taxation of
costs.**

[B. 705.]

92. Where an order is made by the High Court in Court or in Chambers for payment of any costs, the order shall direct the taxation thereof by the Taxing Officer; except in cases where a gross sum in lieu of taxed costs is fixed by the order.

**General
power of
Court.**

[B. 706.]

93. The power of the Court or a Judge to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by this Chapter.

**Accounts,
etc., to be filed
in Prothono-
tary's office.**

[B. 707.]

94. All accounts, lists, notices and other documents directed by these rules to be filed in Court shall be filed in the office of the Registrar.

**General
practice
to apply.**

[Cf. B. 708.]

95. In cases not provided for by this Chapter or by rules of procedure laid down in the Act, the practice and procedure of the High Court of Justice in England in matters relating to companies shall be followed so far as they are applicable and not inconsistent with this Chapter and the Act.

Forms.

[New.]

96. The forms to which reference is made in and to be used under this Chapter are those in Appendix K.⁽¹⁾

CHAPTER XXXII.

APPEALS.

Old Rules 493 to 496 have been omitted. Rules 493 and 494 dealt with the times within which an appeal from a decree (20 days), or an order (4 days), or an application for review (20 days), should be made. These are now dealt with by the Limitation Act. See Act IX of 1908, Schedule I, Articles 151 and 162. Rule 495 which dealt with the delivery of paper books was superseded by the Appellate Side Rule of 1st August 1890; this is now dealt with by Rule 8, *et seq.*

Rules 496 provided that where judgment had been delivered orally a memorandum of appeal could be received without a copy. See now Rule 3 and Rule 22 (b) as to power to exempt parties.

1. A Division Court for the hearing of appeals under section 15 of the Letters Patent from the judgment of a Judge sitting on the Original Side shall consist of two or more Judges as the Chief Justice may determine.

Appeals under section 15 of the Letters Patent from Original Side.

See note to clause 15 of the Letters Patent, 1865, *ante*, p. 80.

[Appellate Side Rules, Ch. II, r. II (c).]

2. A memorandum of appeal shall be in Form No. 1.

Form of memorandum.

See O. XLI, r. 11 (1) of the Code by which the memorandum is required to be signed by the appellant or his pleader. [C]. B. 723.]

3. The memorandum shall be accompanied by a copy of the decree or order appealed from; it need not be accompanied by a copy of the judgment, but the judgment shall be filed before the day fixed for the hearing, and printed in the paper-book.

Copy of decree or order to accompany. [C]. B. 724.] [C]. C. 496.]

Shall.—See Rule 22 (b), *post*.

4. The Registrar is empowered to accept and file a memorandum of appeal if rules 2 and 3 have been complied with, and it appears to him to have been presented within the time allowed by the law of limitation.

Registrar to accept memorandum. [C]. B. 726.]

Time.—See Act IX of 1908, Schedule I, Article 151, and section 5 of the Act as to the power of the Court to admit, after the period of limitation.

It is our practice to count the time from the signing of the decree by the Judge, of which a note is made, and the time for obtaining a copy must be excluded. (See *Ram Madhub Mitter v. Matunginee Dassee*, I. L. R. 13 Cal. 104, F. B.)

5. Where the memorandum of appeal is rejected by the Registrar he shall endorse thereon the date of

Endorsement of rejection. [B. 727.]

Ch. XXXII.

rr. 5-8.

its presentation and return the same to the appellant to be presented, where he thinks fit, to the Appellate Court.

Application
for admission
of rejected
memorandum.

[B. 730.]

6. Application for the admission of a memorandum of appeal rejected by the Registrar shall be made to the Appellate Court, at the earliest opportunity. The Appellate Court, on hearing such application, shall admit or reject the same with or without notice to the other side. Where admitted it shall be admitted as of the date of its presentation to the Registrar.

Paper-book
to be prepared.

[Appellate
Side Rules,
Ch. VII,
r. I.]

7. Where an appeal is preferred to the High Court from its Original Jurisdiction, the appellant's attorney shall prepare a paper-book.

Contents of
paper-book
where
appeal is
from decree.

[Appellate
Side Rules,
Ch. VII,
r. II.]
[Bom. 735.]

8. Where the appeal is from a decree, the paper-book shall contain the following papers arranged in the following order :—

- (a) Table of contents with reference to pages.
- (b) The plaint.
- (c) Written statement.
- (d) The issues.
- (e) Depositions of witnesses examined on behalf of the plaintiff, including depositions taken *de bene esse* or on commission, if put in and used at the hearing.
- (f) Documentary evidence put in on behalf of the plaintiff including such answers to interrogatories delivered for the purposes of discovery as have been used at the hearing and marked as exhibits, together with the interrogatories so answered.
- (g) Depositions of witnesses examined on behalf of the defendant, including deposition taken *de bene esse* or on commission if put in and used at the hearing.
- (h) Documentary evidence put in on behalf of the defendant including such answers to interrogatories delivered for the purposes of discovery as have been used at the hearing and marked as exhibits, together with the interrogatories so answered.

- (i) The judgment.
- (j) The decree.
- (k) The memorandum of appeal.
- (l) Objections, if any, under O. XLI, r. 22 of the Code.
- (m) Any document rejected by the Original Court where its rejection is a ground of appeal or cross-objection.
- (n) Such other documents as both the appellant and the respondent consider necessary, or as the Registrar may direct, on notice to the parties. [First portion new.]

9. In the case of other appeals, only such papers shall be printed as were used by the parties at the hearing and such other documents as both the appellant and the respondent consider necessary, or as the Registrar may direct, on notice to the parties. In other cases.
[Cf. A. S. R.,
Ch. VII, r.
III (a).]
[Bom. 736.]

10. The appellant shall, as soon as possible, after filing a memorandum of appeal, prepare a list of the papers and documents which he requires to be printed in the paper-book, and get such list approved by the respondent. Index.
[New.]

In case of difference between the appellant and the respondent or their respective attorneys as to the papers and documents to be printed in the paper-book, the appellant shall, within a fortnight from the date of filing his memorandum of appeal, furnish to the Registrar a list of the papers and documents which he requires to be printed and the respondent filing cross-objections shall do the same within a week from the date of filing his cross-objections. The Registrar shall, upon receiving such list, give notice to the parties and give directions as to the papers and documents which should be included in the paper-book. The time allowed by this rule may be extended by the Registrar on good cause being shown. Settlement of index
[Cf. A. S. R.,
Ch. VII,
r. III (b).]

This Rule is new but in accordance with the practice.

Registrar.—See Rule 23, *post*.

11. Only the English translation of any document not in the English language shall be entered in the paper-book or printed. English translation.
[A. S. R.,
Ch. VII,
r. IV.]
[Bom. 737.]

**Ch. XXXH.
rr. 12—15.**

Directions
for printing
of paper-
book.

[*A. S. R.*
Ch. VII,
r. V.]

12. The paper-book shall be printed in accordance with the following directions :—

- (a) All paper-books shall be printed in the form known as demy quarto.
- (b) The size of the paper used shall be such that the sheet when folded will be eleven inches in height and eight inches and a half in width.
- (c) The type to be used in the text shall be pica type; but long primer shall be used in printing accounts, tabular matter, and notes.
- (d) The number of lines in each page of pica type shall be forty-seven, each line being five inches and three quarters, or 146 millimetres.
- (e) Every tenth line on each page shall be numbered in the margin, that is, the tenth line will be numbered 10, and the second tenth line 20, and so on.

Number of
copies.

[*A. S. R.*,
Ch. VII,
r. VI.]

13. Ordinarily there shall be printed thirty copies of the paper-book, but the Registrar may, where necessary, direct a larger number to be printed.

Time for
filing and
delivering
paper-books,
etc.

[*A. S. R.*,
Ch. VII,
r. VII.]

14. The appellant's attorney shall be responsible for the preparation of the paper-book, and shall within two months from the filing of the memorandum of appeal, where the appeal is from a decree, and within one month in other cases, deliver six copies of the paper-book to the Registrar and shall also without delay deliver to the respondent or to each respondent, where there is more than one appearing separately, as many copies as he may require, not exceeding six, on payment by him of the price of such copies, the price being arrived at by dividing the cost of printing by the number of copies printed.

Omission
to file
paper-books.

[*A. S. R.*,
Ch. VII,
r. VIII.]

15. In the event of non-compliance with the last preceding rule, the respondent or his attorney may, with the leave of the Court or a Judge, prepare and deliver such paper-book, or he may apply, on notice to the appellant, to have the appeal dismissed for want of prosecution or for such other order as he may be advised. Where no application is made the case will

be set down in the next Peremptory List of Appeals from the Original Side, and be disposed of by the Court as it may think fit.

16. Where a number of documents in one form have been put in evidence whether as one exhibit or not, it shall not be necessary to print more than one, but reference to the others may be made in the paper-book by giving such particulars as to date or otherwise as may be necessary to show in what respect they differ from the one printed.

Printing of number of documents of similar nature.
[B. 745.]

17. Where the appellant fails to apply for, take out, and deliver to the Sheriff for service the notice of appeal on the respondent within fourteen days from the date of the filing of the appeal, the Registrar may set down the appeal before the Appellate Court for dismissal.

Omission to take out and serve notice of appeal.
[B. 746.]
[C. 492A.]

18. Except as otherwise prescribed by these rules, every application under this Chapter or in relation thereto, or to appeals pending from the Original Side or for stay of execution where appeals are pending, shall be made to the Appellate Court.

Application for stay of execution, etc.
[Cf. B. 747.]

Application.—Sir Francis Maclean, C.J., on 14th August 1900, directed that applications to place on record the representatives of a deceased party to a pending appeal should be to the Judge on the Original Side.

Stay of execution where appeal pending.—An application for stay before appeal, should be to the Court which passed the decree. See O. 41, r. 5 (2) of the Code.

19. Where the Appellate Court shall not be sitting the applicant shall give notice of the nature of his intended application to the Registrar who will communicate the same to the Chief Justice, so that a time may be fixed, and, where necessary, a Bench may be appointed for the hearing of the application.

Application for a Bench when Appellate Court not sitting.
[B. 748.]

20. The paper-book shall be printed, except where the appellant—

Printing of paper-books.
[B. 749.]

(a) has obtained leave to appeal *in forma pauperis*, or

(b) files a written order from the Appellate Court dispensing with printing.

21. In case an appeal for any reason fails to come to a hearing on the merits, any notice of objection under O. XLI, r. 22 of the Code may be treated as a cross-appeal on the application of the respondent by

When objections under O. XLI, r. 22 of the Code may be

Ch. XXXII.
rr. 21—25.

treated as
a cross-
appeal.

[B. 752.]

Power to
enlarge time.

[A. S. R.,
Ch. VII, r.
XI.]

whom the same was given on such terms as the Appellate Court shall think fit.

22. (a) The Appellate Court, or, if such Court be not sitting, a Judge sitting on the Original Side of the High Court, may, upon application, and upon sufficient cause being shown, enlarge the time prescribed by these rules for doing any act to be done under their provisions. An application for enlargement of time must ordinarily be made before the expiration of the prescribed time and must be supported by an affidavit of facts, and also by a certificate of the Registrar showing the dates on which the acts prescribed by these rules were done.

(b) The Appellate Court, or the Judge as aforesaid, may also, upon application and upon sufficient grounds verified by affidavit, exempt the parties or any of them from the operation of the whole or any part of these rules, or may make such special order as it deems fit as to any matter with which these rules are concerned.

Registrar to
include
Assistant
Registrar.

[Cf. A. S. R.,
Ch. VII,
r. XIII.]

23. In the rules in this Chapter, the word "Registrar" includes an Assistant Registrar, to be deputed by the Registrar.

Pauper Appeals.

Application
to appeal as
pauper.

[B. 728.]

24. Every application for leave to appeal as a pauper shall, in the first instance, be presented to the Registrar, who will ascertain whether it has been presented within the period prescribed by the law of limitation, and whether the provisions of the Code with respect to such application have been complied with. Where the application has been presented within the prescribed period, and the provisions of the Code have been complied with, the Registrar shall endorse on the application the date of its presentation and submit it with the necessary papers to the Appellate Court.

See O. XLIV, r. 2 of the Code.

Certain rules
applicable.

[New.]

25. Rules 8 to 10 and 12 to 17 of Chapter XII shall *mutatis mutandis* apply to appeals *in formâ pauperis*.

Applications.

26. The rules in Chapter XX as to notice of application and filing of grounds and other papers shall apply to applications in appeal matters.

Rules applicable to applications.

[New.]

Reviews.

27. Rules 2 and 3 shall, so far as applicable, apply *mutatis mutandis* to applications for review. But an application resting on an alleged error in a judgment or other matter necessitating reference to the judgment shall be accompanied by a copy of such judgment, where a judgment has been recorded.

Form of memorandum of review.

[B. 754.]

The only old rule we had, with reference to reviews of an original side judgment, was Rule 494. The present Rules 27 to 30 are from the Bombay Rules.

28. The memorandum of review shall set forth plainly and concisely the grounds on which review is sought, and where the application proceeds on the ground of a discovery of new matter or evidence, there shall, if possible, be annexed thereto the documents, if any, relied upon, a list of the witnesses, if any, whom it is proposed to examine, a short statement of the evidence expected to be given by them, and an affidavit setting forth the circumstances under which such discovery was made.

Contents of such memorandum.

[B. 755.]

29. Any person desiring a review of any decree or order shall, within the time prescribed by law, present his memorandum of review, properly stamped, to the Registrar, who shall file the same, where it appears to satisfy the requirements of the Code and of these rules; and the parties seeking review shall, as soon as possible, move before the Judge who passed the decree or order for a rule calling on the other side to show cause why the application should not be granted and the suit set down for re-hearing.

Filing of such memorandum and motion.

[B. 756.]

30. Where the Judge who passed the decree or order sought to be reviewed has left the High Court, or is absent on leave for more than three months, the application in the last rule mentioned shall be made to any other Judge on the Original Side.

Procedure, when Judge absent.

[Cf. B. 757.]

31. The form to which reference is made in this Chapter is in Appendix L.⁽¹⁾

Forms.

[New.]

(¹) *Post*, p. 522.

CHAPTER XXXIII.

APPEALS TO THE PRIVY COUNCIL.

See note to clause 39 of the Letters Patent of 1865, *ante*, p. 103. C. P. C., sections 109—112 and O. XLV; See also rules of the Judicial Committee, dated 21st December 1908, printed in the 1910 edition of the Appellate Side rules, p. 22.

By Rule 2 of the rules of the Judicial Committee, it is provided that all appeals (to His Majesty in Council) shall be either in pursuance of leave obtained from the Court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon petition presented by the intending Appellant.

Rules 3 and 4 of those rules deal with the form of such petition and affidavit in support thereof.

Rule 5 with the time for lodging the petition.

By Rule 6, where the Judicial Committee agree to advise the granting of special leave, they shall in their report specify the amount of the security for costs (if any), and the time within which it is to be lodged, and shall, unless it is considered unnecessary, provide for the transmission of the record by the Registrar of the Court appealed from, to the Registrar of the Privy Council.

Rules 8 to 10 deal with petitions for special leave to appeal *in formâ pauperis*.

The question whether the High Court has power to grant leave to appeal to the Privy Council *in formâ pauperis* was raised but not decided in *Thompson v. Calcutta Tramways Co.* (1894), I. L. R. 21 Cal. 523. See also 4 Moore's I. App. at 186.

Petition for
leave to
appeal to
His Majesty
in Council.
[*New.*]

1. Every application for leave to appeal to His Majesty in Council shall be to the Appellate Court by notice of motion supported by a petition (verified by affidavit) which shall be in Form No. 2. The notice, unless otherwise ordered, shall be given for the day fixed by the Appellate Court for hearing Privy Council matters and shall call upon the opposite party to show cause, within four days after service thereof, why a certificate under O. XLV, r. 3 of the Code should not be granted.

Time.—See Article 179 of 1st Schedule to the Limitation Act (IX of 1908).

Security for
costs.
[*Cj. B. 761.*]

2. Within the period prescribed by law, or within such further time as may be granted by the Appellate Court, the appellant shall ordinarily find security for the payment of costs to the extent of Rs. 4,000 and as such security shall, unless otherwise specially ordered by the Appellate Court, either deposit with the Registrar cash or Government securities. In special cases

the Court may require security for costs of appeal to a larger amount, but in no case exceeding Rs. 10,000.

Period prescribed by law.—See O. XLV, r. 7, by which the time for furnishing security for the costs of the respondent, and for depositing the amount required to defray the expense of translation, etc., is laid down as “within six months from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date.”

Security to the extent of Rs. 4,000.—It was held that a deposit of 3½ per cent. Government securities of the nominal value of Rs. 4,000 was sufficient under the corresponding Rule 20 of Chapter IV of the Privy Council Appeal Rules, Appellate Side Edition of Rules, 6. 20, Privy Council Appeal No 46 of 1908 from the Appellate Side—Golap Kumari Saheba v. Gonesh Chandra Mitra and others, and this has also been the practice in appeals from the Original Side.

3. The appellant shall also within the said period deposit with the Registrar, towards defraying the fees and expenses to be incurred in transcribing or printing and forwarding to the Registrar of the Privy Council the transcript or printed record, the sum of Rs. 700 and such further sum (if any) as may subsequently be required by the Registrar.

Deposit for expenses of transcript.
[Cf. B. 762.]

Within the said period.—See note to last rule.

Amount of deposit.—This has been increased from Rs. 400 to Rs. 700. See Rules 13 and 14, *post*.

4. Where the amount or increased amount shall be in excess of the fees and expenses incurred for the purpose for which the deposit is made, the Registrar shall refund the amount of the excess.

Refund of excess, if any.
[New.]

5. After the security has been given and deposit made under rules 2 and 3, a certificate of the Registrar to that effect shall be obtained and application made under O. XLV, r. 8 of the Code to have the appeal declared admitted. Such application shall be by notice of motion to the Appellate Court supported by a petition (verified by affidavit) and the certificate above mentioned—the notice, unless otherwise ordered, shall be given for the day fixed by the Appellate Court for hearing Privy Council matters and shall call upon the opposite party to show cause within 4 days after service thereof why the appeal should not be declared admitted.

Petition to have the appeal declared admitted.
[New.]

6. The appellant shall at the time the deposit is made state whether or not the record is to be printed in India.

Statement by appellant as to place of printing.

Under Rule 12 of the Rules of the Judicial Committee (see headnote, *ante*, p. 336), the record may be printed abroad or in England. In the

[New.]

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rr. 6—10.

latter case one certified copy of the record is to be transmitted to the Registrar of the Privy Council with an index, see Rule 14 (*ib.*).

Contents and
preparation
of transcript.

[*Cf. Bom. 763
first portion.*]

7. In all Civil cases the entire record, exclusive of all merely formal documents, will, with the exceptions hereinafter mentioned, be transcribed in a paper-book and certified where the record is to be printed in England, or printed in a paper-book and certified where the record is to be printed in India.

Index of
documents
included in
paper-book
and list of
documents
and papers
not included.
[*New.*]

8. On the appeal being declared admitted, an index in Form No. 3 of all documents to be included in the paper-book and a list of all other papers, documents and exhibits in the suit to be excluded therefrom under rule 17 of His Majesty's Order in Council of 21st December 1908, and under sub-rule (*b*) of Order XLV, rule 7 of the Code shall, as soon as possible, be prepared in the Account Department of the Registrar's office, and copies thereof furnished to the parties.

Rule 17 of His Majesty's order runs as follows :—" The Registrar as well as the parties and their Agents, shall endeavour to exclude from the record, all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied shall be enumerated in a list to be placed after the index or at the end of the record."

Notice to
parties as to
documents to
be included
in or exclud-
ed from the
transcript.

[*New.*]

9. On delivery of the copies in the last preceding rule mentioned, the Registrar or other proper officer of the Court shall serve notice upon the parties calling upon them to specify within a certain time, not exceeding 10 days from the date thereof, what accounts, papers, documents or exhibits on the record and not included in the index they consider to be necessary evidence in the appeal, and to indicate any which they consider immaterial to any question to be determined upon the appeal, and fixing a day not less than a fortnight from the date of the said notice for settlement of the index and list.

Application
to the Court
for order to
include or
exclude
documents.

[*New.*]

10. Any of the parties who may be dissatisfied with the decision of the Registrar or other proper officer on the settlement of the index and list may, within a fortnight from the date of such decision, apply to the Appellate Court on notice to the other party or parties for an order that any paper on the record not already included in the index and list may

be added to or where already included may be excluded from the paper-book. The costs of such application shall be paid by such party or parties as the Court shall think fit.

11. In case any original documents or exhibits are required to be transmitted with the paper-book, application for an order to the Registrar to transmit such documents may be made to the Judge in Chambers, who may make such order or refer the matter to the Judges who heard the appeal, or where they or either of them are not in Calcutta, to the Appellate Court.

Application
for trans-
mission of
original
documents.
[B. 706.]

12. In the index and in the paper-book the papers shall be placed in the following order:—

Order in
which papers
to be placed
in the index
and paper-
book.

(Where the appeal is from a decree.)

PART I.

Pleadings.

- (a) *Plaint.*
- (b) *Written statements.*

Appeal from
decree.
[New.]
[Cf. A. S. R.,
Ch. IV,
r. XI(a).]

PART II.

Documentary evidence on behalf of the plaintiffs.

PART III.

Oral evidence on behalf of the plaintiffs.

PART IV.

Documentary evidence on behalf of the defendants.

PART V.

Oral evidence on behalf of the defendants.

PART VI.

Proceedings.

- (a) *Memorandum of issues (if any).*
- (b) *Judgment of the Court of first instance.*

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r. 12—13.

- (c) Decree of the Court of first instance.
- (d) Memorandum of appeal to the Appellate Court.
- (e) Cross-appeal or memorandum of objections under O. XLI, r. 22 of the Code (if any).

PART VII.

Subsequent proceedings.

- (a) Judgment of the Appellate Court.
- (b) Decree of the Appellate Court.
- (c) Application for leave to appeal to Privy Council.
- (d) Order on such application.
- (e) Application to declare appeal to Privy Council admitted.
- (f) Order on such application.

PART VIII.

Miscellaneous.

Such other documents as may be deemed necessary and not mentioned above.

PART IX.

List of papers omitted under rule 17 of His Majesty's Order in Council of 21st December 1908, and under O. XLV, r. 7 (b) of the Code.

(Where the appeal is from an order.)

Appeal from
order.

Instead of the documents set out in Parts II to V, the documents used at the hearing before the Court of first instance.

This Rule is now but in accordance with the practice of the Original Side.

Part IX.—See note to Rule 8, *ante*.

Table of
charges.
[*Ch. A. S. R.,*
Ch. IV,
r. XV(b).]

13. The following charges shall be payable in respect of the matters specified below :—

Estimate of costs (where necessary) to be
paid in Court-fee stamps

Rs. A. P.
16 0 0

Copying English portion of record per folio	0	0
Examining ditto ditto	0	6
Transcribing (one copy) per folio	0	0
Examining ditto ditto	0	0
Certifying paper-book for every 8 pages or part of 8 pages (to be paid in Court-fee stamp)	1	0 0
Preparation of index for every 16 papers or part of 16 papers (to be paid in Court- fee stamp)	1	0 0
Where the paper-book is to be printed in India :—		
Printing (50 copies) per printed page from Re. 1-8-0 to	3	0 0
Examining proofs for every 750 words	1	0 0

The above rates will be subject to alteration.

14. The applicant, at the time the deposit is made under rule 3 or where any further deposit is required, may apply to the Registrar for an estimate of the fees and expenses in the said rule mentioned. Such estimate shall be prepared and shall include the matters referred to in the preceding rule and be framed in accordance with the charges above specified. The appellant shall be entitled to be heard by the Court on any objections he may make to the estimate, but such objections are not to delay the making of the deposit or the further deposit.

Estimate of
fees and
expenses.
[New.]

15. After the index and list have been settled two copies thereof and two copies of the paper-book used in the appeal from the Original Side shall, where the paper-books are to be printed here, be transmitted by the Registrar to the Registrar on the Appellate Side together with all the original records as set out in the index. The Registrar, Appellate Side, shall then cause the paper-book to be printed in the Privy Council Department of his office in the same manner as appeals from the Appellate Side of this Court—the charges and expenses therefor being paid by the Registrar out of the amount of the deposit on bills therefor being passed by the Deputy Registrar, Appellate Side.

Preparation
of printed
paper-books.
[New.]

This and the next two rules are new. They have been framed to ensure despatch in the printing of the record. As the Appeals from the Original Side are few, we have no P. C. Department as there is on the Appellate Side. By arrangement with the Registrar of that side of the Court advantage will be taken of that Department in the manner indicated in these rules.

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rr. 15—21.

After an appeal has been declared admitted, it will be the duty of the Account Department to prepare the index under Rule 8 as soon as possible, and the procedure will then be as laid down in that and the following rules.

**Additional
papers.**
 [New.]

16. The Registrar shall also transmit to the Registrar, Appellate Side, all applications and orders made after transmission of the index, and such additional papers shall be added to the paper-book, or where the paper-book has been completed, in an additional paper-book.

**Despatch of
printed
paper-books.**
 [New.]

17. After the paper-books have been printed they shall be sent by the Registrar, Appellate Side, to the Registrar for despatch to the Registrar of the Privy Council and at the same time all original records and other papers received for the preparation of the paper-books shall be returned.

**Account to
ascertain
actual cost
of transcript.**
 [New.]

18. After the despatch of the paper-book to the Registrar of the Privy Council the actual cost of and in connection with the same shall be ascertained and any balance remaining in the hands of the Registrar shall be refunded to the appellant.

**Notice to res-
pondent of
admission of
appeal to His
Majesty in
Council.**
 [New.]

19. Notice of the order admitting the appeal to His Majesty in Council shall be issued by the Registrar or other proper officer for service on the respondent, on the record, whether he shall have appeared on the hearing of the application for a certificate under O. XLV, r. 3 of the Code, or not. Such notice shall be served by the attorney for the appellant and an affidavit of due service thereof shall be filed by such attorney immediately after such service.

**Notice to
respondent
of despatch
of transcript
record to the
Registrar of
the Privy
Council.**
 [New.]

20. Notice of the despatch of the paper-book to the Registrar of the Privy Council shall be issued by the Registrar or other proper officer for service on the respondent, whether he shall have appeared on the hearing of the application for a certificate under O. XLV, r. 3, of the Code, or not. Such notice shall be served by the attorney for the appellant and an affidavit of due service thereof shall be filed by such attorney immediately after such service.

**Registrar's
certificate as
to notice to
respondent
of order ad-
mitting the**

21. After the despatch of the paper-book, the Registrar or other proper officer shall, upon satisfactory proof of service of the notices in rules 19 and 20 mentioned, prepare and sign and forward by post,

without delay, to the Registrar of the Privy Council a certificate that the respondent has been served with such notices.

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rr. 31—33.

appeal and
despatch of
paper-book.
[New.]

22. The forms to which reference is made in this Chapter are in Appendix L.⁽¹⁾

Forms.
[New.]

⁽¹⁾ *Post*, pp. 523, 524.

CHAPTER XXXIV.

REFERENCES FROM THE CALCUTTA COURT
OF SMALL CAUSES AND REVISION.Statement of
reference.[*New.*]
[*Cf. C. 486.*]

1. The statement referred to in the 3rd paragraph of section 69 of the Presidency Small Cause Courts Act (XV of 1882) shall be signed by the Judge or Judges of that Court by whom the reference is made, and shall be forwarded together with other necessary papers to the Registrar.

Statement.—The old rule spoke of a “case.” The section speaks of a “statement.”

Under section 69 of the Act, a reference is compulsory “if two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, or, if in any suit or in any such proceeding, in which the amount or value of the subject-matter, exceeds Rs. 500, any such question arises upon which the Court entertains reasonable doubt, and either party so requires.”

Reference to
be numbered,
etc.[*Cf. C. 487.*]

2. The reference shall be numbered, and the number of the reference and the names of the parties shall be entered in a book to be kept for that purpose in the Registrar's office.

Entry of
reference in
the list of
appeals.[*Cf. C. 488.*]

3. Unless otherwise ordered, the reference shall be entered in the list of appeals from the Original Side, and notice thereof shall be given to the attorneys of the parties, where they are represented by attorneys, or to the Registrar of the Court of Small Causes for communication to the parties, where they are not represented by attorneys.

This is in accordance with our practice. See Chapter X, Rule 88, *ante*, p. 170.

Hearing of
reference.[*Cf. B. 59.*]

4. Such references shall be heard by the Division Bench appointed for the hearing of appeals from the High Court, Original Side.

Forwarding
copy of order,
etc., after
disposal.[*Cf. B. 60.*]
[*Cf. C. 490.*]

5. The Registrar shall, after disposal of the reference, forward to the Registrar of the Court of Small Causes a copy of the order made in the case together with a copy of the judgment, or in case no written judgment is delivered, a copy of the minutes of the order made by the Appellate Court.

6. The costs of the hearing of the reference, unless otherwise ordered, shall be costs in the cause to be taxed by the Taxing Officer in accordance with the two following rules.

Costs of hearing.
[Cf. B. 61.]

7. Where Counsel is employed, one Counsel only shall be heard on each side, and a fee to one Counsel only will be allowed, not exceeding Rs. 68 in cases within the limit of Rs. 500, or Rs. 85 in cases above Rs. 500 but not exceeding Rs. 1,000, or Rs. 119 in cases above Rs. 1,000 but not exceeding Rs. 1,500, or Rs. 136 in cases above Rs. 1,500, unless the Court shall, on account of the difficulty or importance of any such case, think fit to sanction a higher fee or the employment of a second Counsel, in which latter case a fee will be allowed to him not exceeding the amount payable to the first Counsel under this rule. No consultation fee or any fee other than those above mentioned shall be allowed unless otherwise ordered by the Court.

Number of Counsel to be employed and their fees.
[Cf. C. 491.]

The words of the old rule "in cases above Rs. 500" between "unless" and "the Court shall on account of the difficulty, etc.," have been omitted. Many of the references are test cases and justify the employment of senior counsel.

8. Where an attorney is employed, he shall, unless otherwise ordered, receive for all his work and labour in the matter, and in lieu of all fees, one fee of Rs. 32 in cases not exceeding Rs. 500, or of Rs. 64 in cases above Rs. 500 but not exceeding Rs. 1,000, or of Rs. 80 in cases above Rs. 1,000 but not exceeding Rs. 1,500, or of Rs. 96 in cases above Rs. 1,500.

Attorney's fees.
[Cf. C. 492.]

The words "unless otherwise ordered" are new.

9. Applications under section 115 of the Code for revision of decrees or orders of the Calcutta Presidency Small Cause Court shall be heard by a single Judge sitting on the Original Side of the High Court.

Hearing of revision.
[A. S. R.,
Ch. II, r. V.]

CHAPTER XXXV.

TESTAMENTARY AND INTESTATE JURISDICTION.

Jurisdiction.—See Letters Patent of 1865, clause 34, *ante*, p. 100. Also clause 22 of the Charter and note thereto, *ante*, p. 36.

See also The Indian Succession Act (X of 1865¹); the Probate and Administration Act (V of 1881²); and the Administrator General's Act (II of 1874³).

The rules in Mr. Belchambors' book relating to grants of Probate and Letters of Administration were Rules 737 to 771. Of those, Rules 737 to 743, 758 to 761 and 771 were rules of the Supreme Court, most of which are unnecessary having regard to the Acts above referred to and to the Court Fees Act (VII of 1870⁴).

The rules in this Chapter are with certain exceptions to which reference is made in the notes to the rules, in accordance with our practice.

We have retained our practice as to the application for a grant being made to a Judge, and not, as in Bombay, to the Testamentary Registrar, it being considered doubtful whether the Court under its Charter can delegate the power of making an order for the issue of a grant to an officer.

Non-contentious
business.
[B. 550.]

1. Non-contentious business shall include the business of obtaining probate and letters of administration (with or without the will annexed, and whether general, special or limited) where there is no contention as to the right thereto, including the passing of probates and letters of administration through the Court in contentious cases where the contest is terminated, and all *ex parte* business to be taken in the Court in matters of testacy, and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or letters of administration.

Will to
include
codicil.
[B. 552.]

2. The word "will" in this Chapter includes a "codicil."

(¹) Amended by Acts XXI of 1865, XXIV of 1867, VII of 1870, XXI of 1870, XIII of 1875, II of 1877, XV of 1877 (Schedule 1), VI of 1881, VI and VII of 1889, II of 1890, XII of 1891, VI of 1900, VII of 1901, V of 1902, and VIII of 1903.

(²) Amended by Act XX of 1886, VI and VII of 1889, II of 1890, XII of 1891, VI of 1900 and VIII of 1903.

(³) Amended by Act IX of 1881, II of 1890, XII of 1891, VI of 1900, VII of 1901, and V of 1902.

(⁴) Amended by Acts XX of 1870, XIII of 1875, XII of 1891, XI of 1899, X of 1901, VI of 1905, VII of 1910, and XIV of 1911.

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rr. 3-4.

3. The Registrar shall give notice of all applications for probate or letters of administration to the Secretary to the Board of Revenue.

Notice of application to whom to be given. [Cf. B. 555.]

See section 19H (2) of the Court Fees Act (VII of 1870) and sub-clause (3) of that section, under which the Collector may inspect and take copies of the record of any application, for the purpose of inquiring into the value put upon the estate of the deceased, by the applicant in his affidavit of

4. Every application for probate or for letters of administration with or without the will annexed shall be accompanied by—

Application for probate or letters of administration.

(a) A certificate of the Registrar as to duty having been paid (Form No. 1), or a certificate of the Taxing Officer that no duty is payable (Forms Nos. 2, 2A and 3). [New.]

(b) A certificate of the Registrar that no intimation has been received by this Court from any other High Court or any District Court, of any grant of probate or letters of administration of the property and credits of the deceased with effect throughout the whole of British India (Form No. 4).

Application.—To be by petition. For contents of such petition, see for probate (section 244, I. S. Act; section 62 P. & A. Act); for Letters of Administration (section 246, I. S. Act; section 64 P. & A. Act).

And see section 191 of the Court Fees Act (VII of 1870 as amended by Act XI of 1890, s. 2) by which it is provided that no order entitling the petitioner to a grant, shall be made until he has filed a valuation of the property in the form set forth in the third schedule (usually referred to as the affidavit of Assets) and the Court is satisfied that the fee mentioned in No. 11 of the 1st Schedule to the Act has been paid on such valuation.

(a) It is only where *no duty* is payable that the certificate of the Taxing Officer is required.

It used to be our practice for the Testamentary Department to enquire into, and be satisfied as to, the values put upon assets set out in Annexure A to the affidavit of assets, and also as to the debts, etc., set out in Annexure B which were sought to be deducted as not being liable to duty. After correspondence with the Collector and the Government, it was eventually agreed by the Government that "it was not the intention of the Legislature in enacting Act XI of 1890, that Civil Courts should check the valuation put upon the various items of property set out in the affidavit of valuation according to the form prescribed in the Third Schedule to the Act, but should merely satisfy themselves that the proper fee has been paid on the valuation declared. The duty of checking the correctness of the valuation itself is a matter for the Revenue Authorities on receipt from the Civil Courts of notices of applications under section 19A of the Act." See letter from Home Department, No. 1274-C., dated 20th February 1918.

(b) See section 242A of the I. S. Act and section 60 of Probate and Administration Act.

Ch. XXXV.

r. 5-9.

Proof of
identity.

[*Cf. B. 582.*]

5. The Judge may, in cases where he deems it necessary, require proof, in addition to the usual statement required to be made in the petition, of the identity of the deceased or of the party applying for the grant.

This is the English rule (see Non-Contentious Rule 48, Tristram & Coote, 14th Edition, p. 689). See also cases on pp. 24 and 25 of that book.

Renuncia-
tion.

[*B. 584.*]

6. No person, who renounces probate of a will or letters of administration of the property of a deceased person in one character, shall, without the leave of the Judge, take out representation to the same deceased in another character.

This is the English Rule 50. See Tristram & Coote, p. 690.

Without leave of the Judge.—It was held that the rule was for the general guidance of the Registrars, and capable of modification by the Court where sufficient reason could be shown (*Re Loftus*, 3 Sw. & Tr. 311).

Administra-
tion to a
creditor.

[*Cf. B. 560.*]

[*Cf. C. 745.*]

7. In all applications by a creditor for letters of administration, it shall be stated particularly how the debt arose and whether the applicant has any and what security for the debt.

See section 206, I. S. Act; section 23, P. & A. Act; and section 15 of the Administrator General's Act under which the Administrator General is entitled in preference to a creditor.

Our old Rule 746, which required a creditor to whom a grant was made to give a special bond, undertaking to pay all debts of equal degree in equal proportions without any preference to his own debt, has been omitted as unnecessary. See sections 281 and 282, I. S. Act, and sections 103 and 104, P. & A. Act.

Production
of deed,
paper, etc.,
referred to
in will.

[*B. 567.*]

8. Where a will contains a reference to any paper, memorandum, or other document of such a nature as to raise a question whether it ought not to form a constituent part of the will, such paper, memorandum or other document should be produced with a view to ascertain whether it is entitled to probate, and where not produced, its non-production must be accounted for. No paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

Cf. English Non-Contentious Rules 12 and 13, Tristram & Coote, p. 689.

As to power to compel production see section 287, I. S. Act; section 54, P. & A. Act.

Citation to
rightful
parties

9. On an application for letters of administration, unless otherwise ordered, a citation shall issue to all persons having a right to take the grant prior or equal

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N. 9-12.

to that of the applicant, unless such persons have signified their consent to the application.

[New.]
[Cf. Cal. 742, 743.]

See sections 200 and 207 of the I. S. Act which provide for the persons to whom, under that Act, letters of administration may be granted. Those sections have not been incorporated in the P. & A. Act. Their place is taken by section 23 of that Act.

See section 198 of the I. S. A. (section 16 of P. & A. Act) as to citation to an Executor who has not renounced; and section 15 of the Administrator General's Act as to that officer's right to administration in preference to a creditor, a legatee (other than an universal legatee) or a friend of the deceased.

See also section 250, I. S. A. (section 69 of P. & A. Act) by which citations may be issued calling upon all persons claiming to have any interest in the Estate to come in and see the proceedings.

10. Where letters of administration are applied for by a creditor, a special citation shall be issued to the widow, if any, and to the next-of-kin, provided they shall be resident within the jurisdiction or have any known agent or agents resident within the jurisdiction, and to the Administrator General of Bengal, and a general citation shall be issued to all persons claiming to have any interest in the estate of the deceased.

Citations on application by creditor.
[Cf. C. 744.]

See note to last rule. Also sections 198 and 206 of the I. S. A. Section 198 has been incorporated in the P. & A. Act (section 21) but not section 206.

11. Where letters of administration of the estate of a deceased woman of the town are applied for, a special citation shall be issued to the Government Solicitor.

Citation to Government Solicitor where deceased is a woman of the town.
[New.]

This is in accordance with our practice.

As to the right to stridhan property of a Hindu woman, who has adopted the life of a prostitute, upon her death. See *Hari Lal Sinha v. Tripura Charan Roy* (1913), 17 C. W. N. 679, where the previous decisions are fully discussed.

12. All citations shall, unless otherwise ordered, direct the persons cited to show cause on the fourth day from the day of service where the parties to be cited reside within the town of Calcutta, or on such day certain as the Judge shall direct where they reside outside Calcutta; and, where they cannot be served in the manner provided for service of process, may be served by the insertion, as an advertisement in such local newspapers as may be directed, of a notice in Form No. 5.

Direction in citation to show cause on a certain day.
[Cf. C. 747 & 769.]

The latter portion is new but in accordance with practice.

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rr. 12—15.**

Grants
limited to
Province
of Bengal.

[*Cf. B. 558.*]
[*Cf. O. 763,*
764.]

13. All grants of probate or letters of administration (with or without the will annexed) other than grants under the Administrator General's Act shall, unless otherwise ordered, be drawn up by the Registrar with effect within the Province of Bengal.

In accordance with our practice the grant is restricted to the Province of Bengal unless it is shown that there is property outside the Province. It would otherwise be necessary, in every case, under section 242A, I. S. A. (section 60, P. & A. Act) to send a certificate with a schedule of property under Rule 20, *post*, to every other High Court.

Grants to the Administrator General are as a rule drawn without any qualifying words. They then, under section 23A of Act II of 1874 have effect throughout the *Presidency* of Bengal as defined in that Act. Where there is property outside such *Presidency* the Court may, under the proviso to that section, direct by its grant that it shall have effect throughout either or both of the other *Presidencies*. See next rule.

Grants
throughout
British India.

[*Cf. B. 559.*]
[*Cf. C. 765.*]

14. In all cases under the Indian Succession Act, the Hindu Wills Act or the Probate and Administration Act, in which it is sought to obtain a grant of probate or letters of administration (with or without the will annexed) to have effect throughout British India, or under the Administrator General's Act with effect throughout either or both of the *Presidencies* of Bombay and Madras as defined in that Act, such grant must be expressly asked for, and it must be shown where the assets are situated.

See note to previous rule.

One or
more sureties
to the bond
required.

[*New.*]
[*Cf. C. 749.*]

15. Every person to whom a grant of letters of administration, other than a grant under section 212 of the Indian Succession Act, is committed, shall give a bond to and in the name of the Chief Justice with one or more sufficient sureties to be approved by the Registrar. Such bond shall in all cases be prepared in the office of the Registrar (Forms Nos. 6 and 7) and shall, unless otherwise ordered by the Court or a Judge, be given in the amount of the full value of the property for which the grant is to be made.

The old rule which required two or more sureties has been altered. See note to clause 23 of the Charter, *ante*, p. 36.

Sureties.—The English practice as to the number of sureties is stated in Tristram & Coote, p. 84, as follows: "Where the Estate does not exceed £50, one surety only is joined with the Administrator. In the case of a husband, or his representative, administering to his wife one surety only is required, whatever may be the amount of the Estate, and whatever may be the form of the grant (*C. Noel*, 4 Hagg. 208, and *Non-Contentious Rule 39*, 1862). The husband's attorney is also allowed to participate in this privilege. In all other cases two sureties are required."

In order to facilitate the finding of the requisite security the Court will permit the number of the sureties to be increased (*Herbert v. Sheill and others*, 3 Sw. & Tr. 481).

A Guarantee Society may now be accepted as surety. See Rule 16.

As to who may not be sureties see Rule 71 of Chapter XXXVIII, *post*, p. 436.

The Court will not discharge the original sureties to an administration bond, and allow other sureties to be substituted for them (In goods of *Stark*, 1 P. & M. 76; 35 L. J. Probate, 42). But in the goods of *Kanai Lal Khan* [which case is referred to later], the applicant and the sureties were allowed, under the special circumstances of that case, and the Court being satisfied that the applicant had duly accounted, to have the charge on their immoveable property released upon entering into a fresh Bond without such charge. See order of *Chaudhuri, J.*, dated the 2nd July 1913.

Bond.—The bond is for the due collection, getting in and administration of the *Estate* of the deceased, *i.e.*, the whole Estate. See section 250, I. S. Act, and section 78 of the P. & A. Act. By the latter section the Court is given the discretion of taking a Bond from an Executor upon probate being granted to him, which discretion is not given by the corresponding section in the I. S. A.

The bond (except in the case of a grant under section 212, I. S. A., see section 256 of that Act) cannot be dispensed with, but in special cases the Court may allow it to be in a limited form. (In goods of *A. S. Gubbay* (1899), 1 L. R. 26 Cal. 408; In this case the grant was limited for the purpose of transferring property which was vested in the deceased but in which he had no beneficial interest.) In the case of a grant of administration *ad litem* (section 222, I. S. A., section 28, P. & A. Act) the amount of the Bond may be limited to a nominal sum. (See in the goods of *F. A. Mercado*, petition filed 28th November 1901; and in the goods of *Mobarruck Bibee*, 20th February 1904.)

In a case where the estate of the deceased was valued at 18 lakhs, of which Rs. 5,75,000 was immoveable property, the bond of the applicant and his two brothers, who were proposed as sureties, was accepted, subject to their charging their immoveable properties to secure the interest of the beneficiary who was a minor. (In the goods of *Kanai Lal Khan*, 16th July 1908, *Woodroffe, J.*)

Where the two applicants were the only sons of the deceased, and their mother consented, the assets consisting of Government securities of the value of Rs. 10,900 and the debts were Rs. 20 only, the bond of the applicants and of two sureties one worth the whole sum and the other worth Rs. 6,000 was accepted. (In the goods of *Doorga Narain Kur*, 27th July 1908, *Woodroffe, J.*)

16. A Guarantee Society, duly approved of by the Full Court, may be accepted as surety upon its joining in a bond with the Administrator or Administrators in either Form No. 8 or Form No. 9.

Guarantee
Society
as surety.
[New.]
[O. 749A.]

Rules 15 to 18 were passed and old Rule 749 repealed, with effect from 15th June 1912. See Notification of 29th May 1912.

The Commercial Union Assurance Co., Ltd., were approved of as a Guarantee Society under Rule 749A (Rule 16) and Messrs. Gillanders, Arbuthnot & Co. were approved as Agents of such company under Rule 749B (Rule 17), by the Full Court, on 15th June 1912. This will be in a European Estate up to 8 lakhs. In an Indian Estate 1½ lakhs. See the file of correspondence on this subject in the correspondence department and the letter from the Commercial Union Co., Ltd., in England to the Registrar, dated 29th February 1912.

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rr. 16—31.

NOTE.—This Company's Agents here were only authorised by their home office to act as sureties in *administration matters*, so without some further authority they could not at present be accepted as sureties under Rule 78 of Chapter XXXVIII, *post*, p. 487.

Procedure
where such
Society has
Agents.
[*New.*]
[*C. 749B.*]

17. Where such a Guarantee Society is represented by Agents, the document or documents authorising the latter to act on behalf of the Society shall in the first instance be submitted to and approved of by the Full Court, and whenever a bond is sent to them for signature, it must be accompanied by a letter in Form No. 10, and the Agents shall sign a reply in Form No. 11.

Filing of
annual
balance
sheet of such
Society.
[*New.*]
[*C. 749C.*]
Attestation
of bonds.
[*Cf. B. 578.*]

18. Every such Society shall each year file with the Registrar a copy of the Society's annual balance sheet duly audited, which copy shall be verified by the affidavit of the Agent or principal officer and be submitted by the Registrar to the Full Court.

19. The execution of administration bonds by persons other than a Guarantee Society shall be attested by the Registrar or Master, or, where executed outside the Court House, by the Registrar or Master or such gazetted officer as may be nominated by the Registrar for that purpose.

Certificate
under
section 242A
of the Indian
Succession
Act.
[*Cf. B. 587.*]
[*Cf. C. 767.*]

20. With every certificate to be sent to a High Court, under the provisions of section 242A of the Indian Succession Act, or section 60 of the Probate and Administration Act, or section 23A of the Administrator General's Act, the Registrar shall send a copy of so much of the schedule of the property and credits of the deceased as relates to the estate within the jurisdiction of such Court.

Under the old Rule 767 a copy of the inventory was sent. This was an unnecessary expense.

Amendment
of grant to
extend to
British
India.
[*Cf. B. 588.*]
[*Cf. C. 766.*]

21. A grant (a) under the Indian Succession Act, the Hindu Wills Act or the Probate and Administration Act, with effect within the Province of Bengal, or (b) under the Administrator General's Act within the Presidency of Bengal as defined in that Act, may be amended, so as to extend its effect in case (a) throughout British India or in case (b) throughout either or both of the other Presidencies. The application shall be on petition supported by a further affidavit of valuation in the form set out in Schedule III to the Court Fees Act with such variations as the cir-

cumstances may require, and on payment of the probate duty payable in respect thereof, and in case of grant of letters of administration with or without the will annexed, on the petitioner giving a further bond, the grant may be amended accordingly.

Further affidavit of assets.—This is in accordance with our practice.

22. Only the grant, and the will, if any, shall be copied in the registers. Where the will is in any vernacular or foreign language, the official translation only shall be copied. Register of grant, etc.
[Cf. B. 590.]

Will.—Includes codicil. See Rule 2.

23. An exemplification or official copy under the signature of the Registrar and the seal of the Court, of a grant so entered in the register, or of a will in respect of which a grant has issued, may be obtained on payment of the prescribed fees. Exemplification or official copy.
[New.]

24. Any person intending to oppose the issuing of a grant of probate or letters of administration must either personally or by his attorney file a caveat in the Registry in Form No. 12. Notice of the filing of the caveat shall be given by the Registrar to the petitioner or his attorney (Form No. 13). Caveat.
[B. 593.]

Rules 24 to 28 have been framed in accordance with practice. Rule 26, however, provides that the time, to file affidavits in support of a caveat which has been lodged *before* application for a grant made, shall run from the service of the notice to be issued by the Registrar. Our old Rule 750 obviously only applied to the case of a caveat filed *after* application made.

25. Where a caveat is entered after an application has been made for a grant of probate or letters of administration with or without the will annexed, the affidavit or affidavits in support shall be filed within eight days of the caveat being lodged, notwithstanding the Long vacation. Such affidavit shall state the right and interest of the caveator, and the grounds of the objections to the application. Affidavit in support of caveat.
[New.]
[Cf. C. 750.]
[Cf. B. 594.]

26. Where an application for grant of probate or letters of administration with or without the will annexed is presented after a caveat has been filed, the Registrar shall forthwith issue notice to the caveator, calling upon him to file his affidavit or affidavits in support of his caveat within eight days from the service of such notice. Notice to caveator to file affidavit.
[New.]

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Consequence
of not filing
affidavit.

[New.]

Procedure
on affidavit
being filed.

[Cf. B. 598.]

Notice to
prove will in
solemn form.

[Cf. B. 595.]

Trial of
preliminary
issue.

[Cf. C. 751.]

Where value
of estate
under
Rs. 2,000,
Court-fee
not to be
charged.

[Cf. C. 758.]

27. Where the caveator fails to file any affidavit in support of his caveat in compliance with rule 25 or in compliance with the notice issued under rule 26, the caveat may be discharged by an order to be obtained on summons.

28. Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner), the proceedings shall, by order of a Judge upon application of the petitioner by summons to the caveator, be numbered as a suit in which the petitioner for probate or letters of administration shall be the plaintiff, and the caveator shall be the defendant, the petition for probate or letters of administration being registered as and deemed a plaint filed against the caveator, and the affidavit filed by the caveator being treated as his written statement in the suit. The procedure in such suit shall, as nearly as may be, be according to the provisions of the Code (Forms Nos. 14 and 15).

29. The party opposing a will may, with his affidavit, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the Court shall be of opinion that there was no reasonable ground for opposing the will.

30. The Court may, on the application of the petitioner by summons to the caveator before making the order mentioned in rule 28, direct the trial of an issue as to the caveator's interest. Where, upon the trial of such issue, it appears that the caveator has no interest, the Court shall order the caveat to be discharged, and may order the issue of probate or letters of administration, as the case may be.

31. Where the gross value of the estate as shown in the affidavit of valuation does not exceed Rs. 2,000, no Court-fees shall be charged, provided the petitioner undertakes to pay to the Secretary of State in Council, or other party entitled thereto, the fees of Court in case the estate shall thereafter be found to be of greater gross value than Rs. 2,000.

The Governor General in Council having by letter dated the 25th April 1856, intimated his consent to the remission of the fees of Court then pay-

able on the grant of probates or letters of administration in the cases of estates under Rs. 2,000 in value, provided probate and letters of administration were strictly necessary and by law required for the administration of such Estates, old Rule 758 to 761 were passed with effect from 7th May 1856 (Belchambers', p. 320). The unnecessary portions of those old rules have been omitted.

32. It shall be lawful for the Court on the application of the Advocate General or of any person claiming to be entitled to the fees payable under an undertaking given in accordance with rule 31, to call upon the executor or administrator liable under the undertaking, to pay such fees, and upon the hearing of the application, to discharge the same, or to make an order absolute for the payment of such fees, together with such order touching the costs of the application as it shall see fit, and every such order shall be enforceable in the same manner as any other order of Court whereby any party is directed to pay money or costs.

Where estate under-valued how Court-fees may be recovered.

[Cf. C. 761.]

33. In cases not provided for by this Chapter, or by the rules of procedure laid down in the Indian Succession Act, or the Probate and Administration Act, or the Administrator General's Act, or the Code, the practice and procedure of the Probate Division of the High Court of Justice in England shall be followed so far as they are applicable and not inconsistent with this Chapter and the said Acts.

Practice.

[B. 603.]

This is from Bombay and is our own practice.

34. The name, true place of abode, description and occupation, if any, of the petitioner, shall be given in the petition and of the caveator in the caveat.

Name, etc., of petitioner and caveator in petition and caveat.

[B. 611.]

35. The Registrar shall transmit, through the Government Solicitor and the Government of India in the Home Department, to the India Office, quarterly, true and attested copies of all wills of which probates have been granted, and of all inventories and accounts filed by executors and administrators, and a schedule of all letters of administrations granted during the preceding three months; and shall also, every half-year, transmit to the Secretary to the Government of India, Military Department, a list of probates of wills and letters of administration of the estates of persons in military service.

Copies of wills, etc., to be transmitted to the India Office.

[Cf. C. 771.]

Case of persons in military service.

A Schedule of all letters.—It has not been our practice of recent years to include in the schedule, estates in which grants *de bonis non* have been made, but the India Office have now asked that these should also be included.

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rr. 36—38.**

Notice of
probate or
letters of
administra-
tion to
Collector.

[*C. C. 770.*]

These rules
how far
inapplicable
to the Ad-
ministrator
General.

[*New.*]

Forms.

[*New.*]

36. Wherever a grant of probate or letters of administration is made and it appears, either from the application or is otherwise brought to the notice of the Court, or the Registrar, that any revenue-paying estate or share of such estate situate outside Calcutta is included in the estate of the deceased in respect of which the grant is made, the Registrar shall notify the grant to the Collector of the District in which such estate or part of an estate is situated.

37. Nothing in the rules in this Chapter shall apply to applications or acts to be done by the Administrator General, in so far as they conflict with the provisions of the Administrator General's Act.

38. The forms to which reference is made in this Chapter are those in Appendix M.⁽¹⁾

⁽¹⁾ *Post*, p. 525.

CHAPTER XXXVI.

TAXATION.

Old Rules 772 to 821 and the Schedules and Tables of Fees set forth in Mr. Belchambers' book of the rules were repealed, and the rules contained in this Chapter (with the exception of some slight modifications since made), were passed by the Full Court with effect from the 22nd November 1912. The sanction of the Governor General in Council was conveyed by Home Department letter No. 1365, dated 12th July 1912, and sanction to the rules as contained in this Chapter by letter No. 545-C., dated 23rd December 1913.

1. The office of the Taxing Officer shall be open throughout the year on every day and during such hours as the office of the Registrar shall be kept open and at such other times as may be necessary.

Taxing
Office day
and hours.
[Cf. C. 772,
first portion.]

2. In all cases in which the rules of the High Court do not sufficiently declare what business or proceedings may be charged for in the bills of fees and costs, or in what manner and by what steps any part of the business or proceedings ought to be conducted, the Taxing Officer is directed to take the rules and practice of the Supreme Court in England as his guide.

When Eng-
lish rules and
practice to be
followed.
[Cf. C. 772,
last portion.]

3. The Taxing Officer shall, in the absence of any special provision in these rules, regulate the taxation of charges for retaining and employing counsel, as nearly as may be, by the practice of the Supreme Court in England, reference being had to any difference which may exist between the two countries in the relative value and use of money.

Counsel's
fees to be re-
gulated as
nearly as
may be by
the practice
in England.
[Cf. C. 780.]

In the absence of any special provision in these rules.—See Rule 32, post.

Number of Counsel.—The number of counsel to be allowed on any application or hearing, whether opposed or unopposed, is in the discretion of the Taxing Officer (*Friend v. Solly*, 10 Beav. 329; *Re Webb*, 21 W. R. 745; 28 L. T. N. S. 726); and, though it is competent to the Court to overrule his decision, it will be rarely interfered with (*Sinclair v. Great Eastern Ry. Co.*, 5 C. P. 135; *Re Maddock* (1899), 2 Ch. 568; *Wheeler v. Fradd*, 14 T. L. R. 440); but the Taxing Officer is bound to use his discretion (*Re Webb*, *supra*).

Unopposed proceedings.—"There are many consent and unopposed cases in which it is necessary for the Court to have the best assistance that counsel can afford" (*per Lord Langdale in Friend v. Solly, supra*). In that case, the Court refused to interfere with the Taxing Officer, who had in his discretion disallowed, as between Solicitor and client, the costs of two counsel for the defendants, in an action where the same solicitor represented all parties.

Motions.—The fact that a petition is unopposed is not, of itself, a sufficient reason for disallowing the second counsel (*Stunge v. Dimsdale*, 9

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rr.

Beav. 170). Two counsel were allowed on an unopposed motion by a Trustee (*Stephens v. Lord Newborough*, 11 Beav. 408).

For cases in which two counsel have been allowed, see *Scott on Costs*, Vol. II, p. 1080. Where a rule had been obtained in Insolvency against the purchaser of property of the insolvent, improper conduct being alleged on the part of the purchaser, the taxing officer allowed him the costs of two counsel on the hearing of the rule:—*Held* that having regard to the allegations made, the taxing officer had exercised a right discretion. (*In re Beer Nursing Dutt* (1897), 1. L. R. 24 Cal. 891.) Where, on a motion for discharge of guardians, the Court ordered the Guardian's costs of opposing the application to be taxed as between attorney and client and paid out of the estate:—*Held* that the taxing officer was right in disallowing as against the Estate an excessive fee paid to counsel on the application, and should only allow the excess even as against the client, when it was manifestly shown that the client knew that the fee was excessive and that he might be called upon personally for the excess. (In the matter of *Thakur Dasse* *Dasse* (1906), 1. L. R. 33 Cal. 827.) See also Rule 6, *post*.

Three Counsel.—Three counsel have been allowed on a motion. (*Re Burroughs Wellcome & Co.'s Trade Mark* (1904), 22 R. P. C. 164.)

The allowance of three counsel on the hearing of an action, is in the discretion of the Taxing Officer. The rule is to allow two counsel except in very special cases, whether as between party and party or as between Solicitor and client. It has been laid down that the circumstances to be considered are: the amount at stake, the commercial importance of the case, the number of witnesses, the length of the brief and other papers, the intricacy and difficulty of the case, the length of time occupied in the hearing, and whether it is a case where a reasonable and prudent man would not venture to come into Court without three counsel. In applying this last test, the chance that all three counsel will or will not attend during the whole of the hearing should *not* be taken into consideration; the Taxing Officer must assume that all three would attend throughout (*Glamorgan County Council v. Great Western Railway Co.* (1895), 1 Q. B. 21) (*Scott*, p. 1031), and see cases cited there, in which three counsel have been allowed and disallowed. Costs of a third counsel are an "unusual expense" within the meaning attached to the term in *Re Blyth and Fanshawe*, 10 Q. B. D. 207, and will not be allowed as between solicitor and client unless the client's consent has been obtained and the solicitor has warned the client that the costs may be disallowed as between party and party (*Re Broad*, 15 Q. B. D. 252; affirmed on appeal (*ib.*, p. 420); and see *Re Barnhill*, 29 L. R. Ir. 396).

It was held in an Irish case that a fourth counsel would be allowed on a trial where the client had specially authorised his employment (*Re Lynch*, 30 L. R. Ir. 278 C. A.).

Amount of Counsel's fees.—The Court will not, as a rule, interfere with the discretion of the Taxing Officer with regard to the *quantum* of the fees, though it has the right to do so (*Scott*, p. 1033, and cases there cited).

It will not interfere unless a gross mistake is made (*Brown v. Sewell*, 16 C. D. 517).

Principles on which the quantum of fees should be regulated.—The Taxing Officer should consider the amount involved and the commercial importance of the case; whether it involves difficult and complicated questions of law and fact; and its importance to the parties (*Scott*, p. 1034, and cases there cited).

Refreshers.—See Rules 32 to 34, *post*.

What bills
of costs are to
be taxed by

4. The Taxing Officer shall tax all bills of fees and costs on every side (other than the Appellate Side) of

the Court including its Insolvency Jurisdiction and in appeals from the Original Jurisdiction.

the Taxing
Officer.

[New.]

5. The Court may at any time determine the scale upon which costs are to be taxed.

Scale of
costs.

[New.]

[Cf. *Bel. R.*
and *O.*, p.
351.]

6. On every taxation the Taxing Officer shall allow all such costs, charges and expenses, as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party; but on taxation as between party and party, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased unnecessarily or through negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses. Nor shall such costs be allowed as between attorney and client without proof that the attorney communicated to the client the probability that they would be disallowed as between party and party, and that the client upon such communication by his sanction or permission in writing authorised them to be incurred.

Costs to be
allowed on
taxation.

[Cf. *C. 785* d
785.]

[Cf. *B. 516.*
Cf. R. S. C.
O. LXV.
r. 27 (20).]

Cf. our old Rule 785 and R. S. C., O. LXV, r. 27 (20).

It was held that the effect of the English rule was to give the Taxing Masters power to increase the scale charges in Appendix N (to O. LXV) notwithstanding the expression therein "not to exceed" or "not exceeding," but not to reduce the minimum scale charges in App. N (*Price v. Clinton* (1906), 2 Ch. 487); and also gave power to allow fees for work done, though not mentioned in App. N at all (*Re Burroughs Wellcome & Co.'s Trade marks, supra*). This, however, has not been our practice.

Where the maximum fee provided is considered insufficient, or where a charge is not provided for, reference may be made to the Court; see Rule 9, *post*.

As regards attorney and client taxation see Rule 69, *post*.

It was also held that the English rule made the standard for consideration, not the event which ultimately happened, but whether, when the proceeding was taken, proper prudence was exercised, or whether there was over caution, negligence or mistake; that is, it makes the standard or governing point for consideration, the state of things before the legal adviser at the time he made up his mind (*Barlett v. Higgins* (1901), 2 K. B. 280).

The last portion of this rule, as to the necessity for obtaining the authority of the client with regard to any unusual expense, is from our old Rule 785 and corresponds with the English practice (see note on p. 1043, *Scott on Taxation*). The words as to the sanction being in writing are, however, new but in accordance with our practice.

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R. 6—9.

Party and Party costs.—"Costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct the litigation and no more. Any charges merely for conducting litigation more conveniently may be called luxuries and must be paid for by the party incurring them." (*Smith v. Buller* (1875), 19 Eq. 475; other cases in which this point has been discussed are *Picasso v. Trustees of Maryport Harbour*, W. N. (1884), 85, where it was said "the successful party ought not to be deprived of what it is intended that he should have, an indemnity against costs reasonably incurred in prosecuting or defending the action"; *Carson v. Pickersgill* (1885), 14 Q. B. D. at 868, per Brett, M. R. "an unsuccessful party is bound to pay his opponent those costs which the opponent was reasonably entitled to incur, and has either paid or rendered himself liable to pay"; *Richardson v. Richardson* (1895), P. 346 C. A., where it was held that "the object of giving costs was to indemnify the successful party against the expense to which he had been put by the unsuccessful party.")

Solicitor and client costs.—There are various forms of taxation as between solicitor and client.

No. 1.—Where the costs are payable by the client to his solicitor; or where the costs are payable out of a fund belonging entirely to the party.

No. 2.—Where the costs are payable out of a general or common fund.

No. 3.—Where the costs are payable out of a fund which belongs to other parties and in which the party has no interest; or where the costs are payable by one party to another.

The taxation in the case of (1) is more generous than in the case of (2) and (3); while in the case of (2) the taxation is not so generous as in the case of (1) but more generous than in the case of (3). The taxation in the case of (3) is the strictest, and in effect gives little more than a taxation as between party and party, except that any necessary letters to, and attendances on, the client are allowed (*Scott*, pp. 1042-1043).

Discretionary fees and allowances how to be dealt with.

[*Cf. R. S. C.*, O. LXV, r. 27 (35).]
[*B. 517.*]

7. In dealing with fees or allowances which are discretionary, the Taxing Officer, in exercise of such discretion, shall take into consideration the other fees and allowances to the attorney and counsel, if any, in respect of the work to which any such allowance applies, the nature or importance of the suit or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and cost of the proceeding and all other circumstances.

Lump sum in lieu of taxed costs in interlocutory applications.

[*Cf. R. S. C.* O. LXV, r. 23.]

8. Upon interlocutory applications where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

Taxing Officer may recommend allowance of fee for any matter unprovided for.

9. Where in the opinion of the Taxing Officer the maximum fee allowed by these rules is insufficient or a fee ought to be allowed for any matter not provided for in the rules or table of fees, he may, upon the application of a party, refer the matter to the Court,

stating what amount, in his judgment, ought to be allowed, and by whom the same ought to be paid, and the Court shall make such order thereon as to the allowance of the whole or any part of the amount proposed by the Taxing Officer as it shall think fit.

(Ch. XXXVI.
rr. 9—12.
[Cf. C. 820.]
[Cf. M. 33.]

10. Where, in proceedings before the Taxing Officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the Taxing Officer may direct such party or his attorney to pay such costs as he may think proper or may set them off against any costs which may be payable to such party.

Penalty
for neglect or
delay.
[Cf. R. S. C.
O. LXXV,
r. 27 (55).]

11. Upon the taxation of the costs which shall have been allowed by any decree or order made in a suit, the Taxing Officer shall make a general examination of the course of the proceedings on which such costs shall have arisen, and where he shall find that any part of such proceeding, attended with costs, has been injuriously or unnecessarily occasioned by the culpable negligence, or improper conduct of any attorney, he shall not allow any charge for the same without the matter being brought to the notice of the Court. And for the better enabling the Taxing Officer to make such enquiry, the officers of the Court shall allow him, without fee, to examine the proceedings in the different offices. And the Taxing Officer shall be at liberty to report to the Court any matter arising out of this rule, on which either himself, or any of the parties interested, may desire that the decision of the Court shall be obtained.

To examine
proceedings
and disallow
charges in
connection
with same if
unnecessary
or occasioned
by negligence
or improper
conduct.
[Cf. C. 778.]

12. In case of any wrong charge being wilfully made in any bill of costs, it shall be the duty of the Taxing Officer, without delay, to bring it to the notice of the Court.

Taxing
Officer to
bring any
wrong charge
wilfully
made to no-
tice of the
Court.
[C. 777 (end

13. The Taxing Officer shall keep a book, in which he shall, from time to time, enter in writing a statement of any doubts or difficulties which in the course of taxation may have arisen as to the interpretation or construction of any of the rules of the Court or the table of fees, and on which it may be desirable that the opinion of the Court should be ascertained, and

Taxing
Officer to
note doubts
on taxation
for submis-
sion to the
Judge.
[C. 773 (first
portion.)]

Ch. XXXVI.
rr. 13-20.

shall submit the same at convenient opportunities to the senior Judge in Chambers and obtain his decision upon the point in question.

Bills between party and party to be between party and party and attorney and client.

[B. 528.]

Marking the number of folios in a bill.

[B. 493.]

14. In all cases of taxation as between party and party, the bill shall be lodged for taxation as between party and party and also as between attorney and client.

15. Every bill of costs lodged for taxation shall specify the exact number of folios contained in the bill lodged. Such folios shall be carefully counted by an attorney's bill clerk or some other responsible clerk who shall mark in red ink on the left hand margin of the said bill each counted folio *seriatim*, the last word of each folio being underlined in red ink.

Contents of bill of costs.

[B. 495.]

16. Every bill of costs shall be properly dated throughout and shall show in a column for the purpose the money paid out of pocket. In matters under the Testamentary and Intestate Jurisdiction there shall be a statement at the head of every bill showing the amount under which the estate has been sworn.

Every bill to be signed by attorney. On payment bill to be client's property.

[B. 497.]

[Oj. C. 777.]

17. Every bill of costs shall be certified by the signature of the attorney from whose office it is issued. A bill of costs when paid shall be the property of the client.

On lodging bill fees for taxation and registration to be paid.

[Oj. B. 494.]

18. The fees for taxation and registration of every bill of costs shall be paid in stamps when the bill is lodged for taxation.

Bill to be accompanied by vouchers. No out-of-pocket payment allowed without proper voucher.

[B. 496.]

19. Every bill of costs shall be accompanied by vouchers regularly numbered and references to the corresponding numbers given in the bill itself and every item of disbursement and the cause thereof shall be distinctly specified. No payment out of pocket will ordinarily be allowed except on production of the necessary voucher, or in case of counsel's fees without the signature of the counsel that the fee has been paid.

When and how bills are to be lodged

20. Within three months from the date of the signing of the decree or order awarding costs or within

such further time as the Taxing Officer may, for reasons to be certified by him, allow—any such extension to be applied for by requisition in writing—the party claiming the same shall leave in the Taxing Office an office copy of such decree or order and, at the same time, lodge the bill, and the vouchers or signatures of counsel in support of any disbursements therein, with the Taxing Officer, whereupon a summons shall forthwith issue fixing a date on which the taxation shall be proceeded with: Provided that, where costs of an interlocutory application or hearing have been awarded, and have not been previously taxed or paid, they may be included in the bill for the whole case.

Ch. XXXVI.
rr. 20—24.
and notice
issued.
[Cf. M. 22.]

21. Where an attorney fails to lodge his bill (with the necessary vouchers) within the time or extended time allowed by the Taxing Officer for that purpose, or in any way delays or impedes the taxation, the Taxing Officer may disallow the fees to which the attorney would otherwise be entitled for drawing his bill of costs and for attending the taxation, and may also exercise all or any of the powers vested in him by rules 10 and 22.

Penalty
for failing
or delaying
taxation.
[Cf. R. S. C.
O. LXV,
r. 19 (28).]

22. Where any party entitled to costs refuses or neglects to lodge his bill for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the Taxing Officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Power to
Taxing Off-
icer as to
delay.
[R. S. C.
O. LXV,
O. XLV,
r. 27 (28).]

23. Before taxation of costs two clear days' notice shall be given to the opposite party: Provided that no notice shall be necessary in any case where such party has not appeared in person or by his attorney or guardian.

Notice of
appointment
for taxation
[B. 100.]

24. The Taxing Officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider

What parti-
ties to attend
taxation
when costs
to be borne
by funds or
estate.

Ch. XXXVI.**r. 24—31.**[*B. 523.*][*Cf. R. S. C.**O. LXV,**r. 27 (27), C.*

777.]

Signing of
summons or
notice under
these rules.

[*New.*]

Bills may
be returned
where service
of taxing
summons is
delayed.

[*Cf. M. 25.*]

Bills returned
not to be
taxed with-
out Judge's
order.

[*Cf. M. 26.*]

No fee for
setting out
unnecessary
matters.

[*M. 53.*]

Allowance
for inspec-
tion.

[*B. 514.*]

Costs of
brief where
suit not
brought on
for trial.

[*B. 518.*]

Costs of ad-
vice of coun-
sel on evi-
dence and of
settling spe-
cial plead-
ings or affi-
davits are dis-
cretionary.

[*B. 519.*]

unnecessary in consequence of the interest of such party in such fund or estate being small or remote or sufficiently protected by other parties interested.

25. Any summons or notice to be issued under these rules may be signed by one of the Assistant Registrars in the Taxing Office and shall be served by the party lodging the bill.

26. Where within one month from the issue of the taxing summons, no steps are taken, by the party having the charge of the bill, to serve the same, the Taxing Officer may, for reasons to be recorded by him, return the bill and vouchers.

27. Where the bill is returned, the Taxing Officer shall not receive or tax it, except under an order of a Judge, to be obtained upon summons in Chambers, supported by affidavit.

28. No fee shall be allowed in respect of documents, or extracts from documents, including letters, which are unnecessarily set out in a pleading affidavit, or brief.

29. No allowance is to be made for any inspection unless it is shown to the satisfaction of the Taxing Officer that there were good and sufficient reasons for making such inspection.

30. Where a suit, appeal or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed, where the Taxing Officer shall be of opinion that such costs were prematurely incurred.

31. Such costs of procuring the advice of counsel on the evidence in any suit, appeal or matter as the Taxing Officer shall in his discretion think just and reasonable, and of employing counsel to settle pleadings and such special affidavits as the Taxing Officer shall in his discretion think proper to be settled by counsel are to be allowed, but a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled which are or ought to be filed at the same time.

Cf. R. S. C., O. LXV, r. 27 (15), and see note to that rule in Scott, p. 1028.

32. Notwithstanding any other provision in these rules the Taxing Officer shall not, unless otherwise ordered by the Court or a Judge, allow as fees to counsel any other or higher fees than those set out in the following table:—

TABLE.

In what proceedings.	Counsel.	First day.	Refresher.
Appeals against Orders	{ Leading 2nd, if allowed	15 G. Ms. 10 ..	8 G. Ms. 6 ..
Other appeals	{ Leading 2nd, if allowed 3rd, ..	50 30 .. 16 ..	15 .. 10 .. 8 ..
Defended Suits in whatever jurisdiction	{ Leading 2nd, if allowed 3rd, ..	30 20 .. 7 ..	10 .. 7 .. 5 ..
Motions and Inquiries or Investigations in Court.	{ Senior Junior, if allowed.		None except such as the Taxing Officer may allow in any special case.
References	One, if allowed		7 G. Ms.
Suits or Appeals to which Rules 57 or 58 are applicable.	{ Leading 2nd, if allowed		
<i>Ex parte</i> Motions and Chamber applications or matters in which a certificate is granted under Rule 56.	One		
<i>Mortgage Suits to which Rule 100 is applicable.</i>			
(a) Brief fee on hearing	One	2 ..	
(b) Applying for final decree	One	1 G. M.	
Application to confirm Return. [See Rule 108.]	One	1	

		Amount of Fees.	Remarks.
Advice on Evidence, or drawing or settling pleadings or affidavits.	One . . .	10 G. Ms.	See Rule 31.
Hearing judgment	One . . .	2 ..	In C. A. V. suits and appeals only.
Consultations	{ Senior Junior	5 .. 3 ..	} See Rule 41.
Conferences	One . . .	5 ..	
General Retainer	Each . . .	5 ..	} See Rule 47.
Special Retainer	Each . . .	2 ..	
Before Arbitrator or Commissioner	One . . .	{ 5 G. Ms.— Single Meeting. 7 G. Ms.— Double Meeting.	} See Rule 76.
Small Cause Court References	As provided in Chapter XXXIV.		

Provided that as between attorney and client the Taxing Officer may allow the difference between the

Ch. XXXVI.
rr. 32—36.

maximum fee allowed by the Table and that actually allowed as between party and party, but where in the opinion of the Taxing Officer such difference or any portion thereof constitutes an excessive fee even as between attorney and client, he shall not allow such portion thereof as he may consider excessive, except upon production of a letter signed by the client authorising or ratifying the payment thereof.

This is new, and has considerably altered the old practice, inasmuch as the Taxing Officer cannot *unless otherwise ordered* allow, even as between attorney and client, more than the maximum fixed by the scale.

Refreshers.—In a case under the old rules it was held, that refreshers are not, as a general rule, to be allowed on motion heard by affidavit; but the Court on hearing the motion can, in its discretion, and if applied to for the purpose, give special directions allowing costs as on the hearing of a case. In the absence of such special directions refreshers should not be allowed (*Garden Reach Spinning and Manufacturing Co., Ltd.* (1886), 1. L. R. 12 Cal. 551).

The Taxing Officer may now allow refreshers in a special case.

Refresher
to absent
counsel.
[B. 521.]

33. In every case where a counsel would be entitled to a refresher fee if present at the hearing of any suit, appeal or other matter in which he is briefed, he shall not be entitled to any refresher fee, if absent, unless he certifies in writing that he has kept himself generally acquainted with the case as it was developed during the course of the hearing.

No re-
fresher un-
less case ad-
journed for
more than a
month.
[C. 790.]

34. No refresher shall be allowed to counsel on any adjournment or postponement unless such adjournment or postponement extend beyond the period of one month.

When a case called on for hearing is adjourned or postponed, counsel should be allowed the usual fee for an application, such as is allowed when a case, before being called on, is postponed as the result of a substantive application made for that purpose. [B]

Costs oc-
casioned by
adjournment.
[C. 799.]

35. No costs of any adjournment or postponement shall be allowed, except such as are rendered necessary in consequence of such adjournment.

Attorneys
not to be al-
lowed to
charge where
acting for
two or more
defendants,
for separate
proceedings
where un-
necessary.

36. Where the same attorney is employed for two or more defendants, and separate written statements are filed or other proceedings had for two or more defendants separately, the Taxing Officer shall consider, in the taxation of such attorney's bill of costs, whether such separate written statements or other proceedings were necessary or proper, and where he is of opinion that any part of the costs occasioned there-

by has been unnecessarily or improperly incurred, the same shall be disallowed.

[C. 784.]

37. Unless the Court, Judge or Officer otherwise orders, the costs of and occasioned by any application for the amendment of any pleading shall be borne by the applicant.

Costs of amendment of pleadings. [Cf. M. 28.]

38. An attendance at the telephone shall, where necessary or proper, be allowed as a letter or as an attendance at the discretion of the Taxing Officer.

Attendance at the telephone, how to be charged. [Cf. M. 43.]

39. Where an attorney acts for different parties to the same suit, appeal or matter, only one set of attendances shall be allowed, unless the Court otherwise orders.

One set of attendance to be allowed to the same attorney acting for different parties. [Cf. M. 44.]

40. No attorney shall be allowed to charge for any attendance in Court during the time that the suit, appeal or matter may have been in the list for hearing, where it shall have been subsequently struck out of the list in consequence of any negligence or want of due diligence on the part of the attorney.

No attendance in Court to be allowed to attorney, if cause struck out in consequence of his negligence. [C. 779 first portion.]

41. Fees for more than one conference or consultation may be allowed in any suit, appeal or matter where it shall appear to the Taxing Officer for some special reason that such additional conference or consultation was necessary or proper.

Fees for conference and consultation. [New.]

42. Where in any case it is necessary to employ a legal practitioner to act as agent beyond the local limits of the jurisdiction of the Court, the Taxing Officer may allow such sum for the costs of the agent and of instructing him as he may think reasonable.

Reasonable costs of agent may be allowed. [Cf. M. 34.]

43. Where on the taxation of a bill of costs payable out of a fund or estate or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the attorney lodging the bill for taxation for drawing and copying it, nor for attending the taxation.

Penalty where one-sixth taxed off where costs payable out of fund etc. [R. S. C. O. LXV, r. 27 (38 E

The words "and disbursements" were added to the English rule in June 1906, in consequence of the decision in *re Mercantile Lighterage Co.*

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rr. 22—26.

maximum fee allowed by the Table and that actually allowed as between party and party, but where in the opinion of the Taxing Officer such difference or any portion thereof constitutes an excessive fee even as between attorney and client, he shall not allow such portion thereof as he may consider excessive, except upon production of a letter signed by the client authorising or ratifying the payment thereof.

This is new, and has considerably altered the old practice, inasmuch as the Taxing Officer cannot *unless otherwise ordered* allow, even as between attorney and client, more than the maximum fixed by the scale.

Refreshers.—In a case under the old rules it was held, that refreshers are not, as a general rule, to be allowed on motion heard by affidavit; but the Court on hearing the motion can, in its discretion, and if applied to for the purpose, give special directions allowing costs as on the hearing of a case. In the absence of such special directions refreshers should not be allowed (*Garden Reach Spinning and Manufacturing Co., Ltd.* (1886), 1. L. R. 12 Cal. 551).

The Taxing Officer may now allow refreshers in a special case.

Refresher to absent counsel.
[*C. 521.*]

33. In every case where a counsel would be entitled to a refresher fee if present at the hearing of any suit, appeal or other matter in which he is briefed, he shall not be entitled to any refresher fee, if absent, unless he certifies in writing that he has kept himself generally acquainted with the case as it was developed during the course of the hearing.

No refresher unless case adjourned for more than a month.

[*C. 790.*]

34. No refresher shall be allowed to counsel on any adjournment or postponement unless such adjournment or postponement extend beyond the period of one month.

When a case called on for hearing is adjourned or postponed, counsel should be allowed the usual fee for an application, such as is allowed when a case, before being called on, is postponed as the result of a substantive application made for that purpose. [B]

Costs occasioned by adjournment.
[*C. 789.*]

35. No costs of any adjournment or postponement shall be allowed, except such as are rendered necessary in consequence of such adjournment.

Attorneys not to be allowed to charge where acting for two or more defendants, for separate proceedings where unnecessary.

36. Where the same attorney is employed for two, or more defendants, and separate written statements are filed or other proceedings had for two or more defendants separately, the Taxing Officer shall consider, in the taxation of such attorney's bill of costs, whether such separate written statements or other proceedings were necessary or proper, and where he is of opinion that any part of the costs occasioned there-

by has been unnecessarily or improperly incurred, the same shall be disallowed.

[C. 784.]

37. Unless the Court, Judge or Officer otherwise orders, the costs of and occasioned by any application for the amendment of any pleading shall be borne by the applicant.

Costs of amendment of pleadings. [Cf. M. 28.]

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Attendance at the telephone, how to be charged. [Cf. M. 43.]

39. Where an attorney acts for different parties to the same suit, appeal or matter, only one set of attendances shall be allowed, unless the Court otherwise orders.

One set of attendance to be allowed to the same attorney acting for different parties. [Cf. M. 44.]

40. No attorney shall be allowed to charge for any attendance in Court during the time that the suit, appeal or matter may have been in the list for hearing, where it shall have been subsequently struck out of the list in consequence of any negligence or want of due diligence on the part of the attorney.

No attendance in Court to be allowed to attorney, if cause struck out in consequence of his negligence. [C. 779 *first portion.*]

41. Fees for more than one conference or consultation may be allowed in any suit, appeal or matter where it shall appear to the Taxing Officer for some special reason that such additional conference or consultation was necessary or proper.

Fees for conference and consultation. [New.]

42. Where in any case it is necessary to employ a legal practitioner to act as agent beyond the local limits of the jurisdiction of the Court, the Taxing Officer may allow such sum for the costs of the agent and of instructing him as he may think reasonable.

Reasonable costs of agent may be allowed. [Cf. M. 34.]

43. Where on the taxation of a bill of costs payable out of a fund or estate or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the attorney lodging the bill for taxation for drawing and copying it, nor for attending the taxation.

Penalty where one-sixth taxed off where costs payable out of fund, etc. [R. S. C. O. LXV, r. 27 (38 B).]

The words "and disbursements" were added to the English rule in June 1908, in consequence of the decision *In re Mercantile Lighterage Co.*

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(1906), 1 Ch. 491, and do away with the effect of that case, under which it was held that the sixth should be arrive at by taking the professional charges by themselves without regarding the disbursements.

Penalty
where one-
sixth taxed
off, in tax-
ation as
between
attorney and
client.

[*Cf. C. 821.*]
[*Cf. B. 5:2.*]

44. Where on taxation of an attorney's bill of costs as between attorney and client, a sixth part be taxed off, the attorney shall pay the costs of taxation including the costs of the attorney (if any) employed in contesting the bill and the same shall be deducted by the Taxing Officer: Provided that the Taxing Officer shall be at liberty to certify specially any circumstances relating to such bill or taxation and the Court or a Judge shall upon application by the attorney whose bill of costs has been so taxed be at liberty to make any such order as such Court or Judge may think right respecting the payment of the costs of such taxation.

Fee pay-
able where
hearing of a
case occupies
more than
one day.

[*C. 810.*]

45. Where a case occupies more than one day, the plaintiff at the original hearing or the appellant in the Court of Appeal shall, every day, after the first day, before the sitting of the Court, deliver to the principal officer in attendance a requisition to proceed with the case, with a court-fee stamp affixed thereon of the value of rupees twenty (being the amount of the fee payable to the Court according to item 34 of the first schedule of rule 74). Such fee, where not paid by the plaintiff or appellant, may be paid by the defendant or the respondent as the case may be, or where there are two or more defendants or respondents, by any one or more of them: but where not paid at all, the case may be treated as having been abandoned and dismissed, and the Court may make such order as to the costs of the suit or appeal as it may think fit. Where such fee is paid by the defendant, or respondent, or any one or more of two or more defendants, or respondents, the Court may make such order with respect thereto, on the final disposal of the suit or of the appeal as the case may be as to it shall seem fit.

Deposition
fee when pay-
able by suitor
acting
in person.

[*Cf. C. 811.*]

46. Where a suitor appears in person, he shall affix on the deposition of each witness examined on his behalf, within one week after the termination of the trial, court-fee stamps equal to the amount of the fee payable for swearing and reducing into writing the deposition of such witness, and for filing any exhibit put in on behalf of such suitor.

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 rr. 47—51.

47. Where default is made in complying with rule 46, the Registrar shall certify the amount due by the defaulting suitor. On production of the Registrar's certificate before a Judge an order (which may be executed under O. XXI of the Code as a decree for money) may be made directing the suitor within a time to be stated in the order to pay to the Registrar the amount certified to be due. Upon payment of the amount mentioned in the order or upon realization of the same by execution, the Registrar shall purchase Court-fee stamps for the certified amount and affix them to the depositions and the list of exhibits, if any.

Procedure where suitor fails to pay deposition fees.
 [New.]

The words as to filing Exhibits are new.

48. In all cases in which the parties are represented by attorneys, the attorney for each party will be held personally responsible to the Court for the payment of the fees for swearing and reducing into writing the depositions of witnesses examined on behalf of his client and for filing exhibits put in.

Attorney personally responsible for deposition fees.
 [Cf. C. 812.]

49. In every such case Court-fee stamps equal to the amount of the fee payable for swearing and reducing into writing the deposition of each witness and for filing exhibits, if any, shall, within one week after the termination of the trial, be affixed on his deposition and on the list of exhibits, if any, by the attorney of the party on whose behalf such witness was examined.

Within what time payable by attorney.
 [Cf. C. 813.]

50. Where default is made in complying with the last preceding rule, the Registrar will give notice in writing to the defaulting attorney, that, unless the fees due be paid within a fortnight from the service of the notice, application will be made against him for an order prohibiting him from acting as an attorney.

Notice to defaulting attorney.
 [Cf. C. 814.]

The time has been extended from 24 hours to a fortnight.

51. Every attorney who shall not have paid the fees due as aforesaid within the time mentioned in the Registrar's notice, may be, where the Court shall think fit so to direct, upon the application of the Registrar (which it shall be his duty to make), prohibited from acting as an attorney until the further order of the Court.

Defaulting attorney disqualified from practising.
 [C. 815.]

CL. XXXVI.**rr. 52-57.**

Removal
of disqualifi-
cation.

[C. 816.]

No costs
to pauper,
unless special
ly ordered.

[C. 791.]

Pauper
not liable to
pay fees to
counsel or at-
torney unless
specially or-
dered.

[C. 792.]

Court-fees in
pauper
matters.

[New.]

Counsel's
attendance
in Chambers
not allowed
unless certi-
fied by Judge,
etc.

[Cf. B. 500.]

[Cf. C. 375,
527.]

Cases where
only one
counsel
shall be al-
lowed unless
otherwise
ordered.

[New.]

[Cf. B. 503.]

52. Every order suspending an attorney from practice for non-payment of fees shall be set aside on the certificate of the Registrar that the fees have been paid.

53. In suits, appeals or matters *in formâ pauperis* no costs will be allowed to the pauper against the opposite party, unless by special order.

See note to Rule 16 of Chapter XII, *ante*, p. 179.

54. No fees shall be payable by a pauper to his counsel or attorney, nor shall any such fees be allowed on taxation of costs against the opposite party, unless by special order of the Court or Judge.

55. No Court-fees shall be payable by an applicant to proceed *in formâ pauperis* except the fee for the petition to proceed.

56. In the taxation of costs as between party and party, the costs of and incidental to the attendance of counsel on summonses or other matters before a Judge in Chambers, or before an Officer, shall not be allowed unless the Judge or Officer shall certify that it was a fit case, for the employment of counsel.

57. Unless the Court or a Judge certify that two counsel ought to be allowed on account of the special difficulty or importance of any particular case, the fees of one counsel only shall be allowed on taxation as between party and party in the following cases :—

- (a) Appeals from the decision of a Judge in any matter where only one counsel is allowed.
- (b) Suits set down as undefended.
- (c) Suits in which the opposite party gives notice to the plaintiff, before the brief has been delivered, that he does not intend to appear.
- (d) Appearances for any formal party to a suit, *e.g.*, a trustee or stake-holder who only appears to submit to the order of the Court and to ask for his costs.

- (e) Hearing on further directions and as to costs where there is no contest.
- (f) On hearing to vary an Officer's or Commissioner's report.

58. In the taxation of costs as between party and party in suits transferred from the Presidency Court of Small Causes for trial in the High Court under the provisions of the Presidency Small Cause Courts Act, and in suits founded on contract filed in the High Court, in which the amount claimed in the High Court does not exceed Rs. 2,000, unless the Court otherwise orders, the costs of instructing one counsel only on each side will be allowed, but otherwise the costs (unless undefended) will be taxed as in a defended suit. Where the amount claimed in any such suit exceeds Rs. 2,000, but a decree is passed for an amount not exceeding Rs. 2,000, the plaintiff shall, unless the Court otherwise orders, be entitled as against the defendant to the costs of instructing one counsel only.

Costs in a suit cognisable by the S. C. Ct. See section 22 of Act XV of 1882.

59. An attorney who has furnished a copy of a document made for the purposes of a suit to the opposite party or his attorney on payment of half or other due proportion of the translation charges shall also be entitled to charge in his bill a fee of 6 annas per folio for such copy.

Charge of 6 annas per folio allowed to attorney furnishing copy of document to other side.

[Cf. B. 511.]

60. Where interlocutory applications have been ordered by the Court or a Judge or allowed by the parties to stand to the trial and are not then mentioned, the costs of such applications are to be treated as costs in the cause and taxed accordingly and need not be mentioned in the decree. Where costs have been reserved, such costs are not to be mentioned in the decree or order or allowed on taxation, without the special direction of the Court or Judge.

Costs of interlocutory application ordered to stand over. Reserved costs.

[B. 522.]

61. Unless the Court otherwise orders, the costs of obtaining or briefing notes of evidence, and a copy of the judgment of the Court, shall not be allowed as between party and party except upon an appeal. The costs of briefing notes of evidence taken on a reference and a copy of the Referee's finding shall be allowed as

Costs of briefing evidence and judgment when may be allowed. [First portion M. 32.] [Last portion new.]

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between party and party upon exceptions to a report, unless the Court shall otherwise order.

Costs of one notice of filing to be allowed.

[*M. 56.*]

Notice of adjournment not to be allowed unless directed.

[*Cf. M. 57.*]

What costs for work done before commencement of proceedings are to be allowed.

[*M. 59.*]

Only one warrant to defend.

[*Cf. M. 60.*]

Taxing Officer to summon client and see client, if possible.

[*Cf. C. 776 last portion.*]

62. Where notice of filing affidavits or other proceedings is required, only one notice shall be allowed for a set of affidavits filed, or which ought to be filed together.

63. Where an appointment or hearing is adjourned, service of a notice of the adjournment or next appointment shall not be allowed, except where such service has been directed.

64. Unless the Court otherwise orders, no allowance shall be made for work done before the commencement of proceedings in the Court, except for a letter before suit, and instructions to sue, appeal or defend.

65. Except where more than one set of costs is allowed, only one warrant to defend shall be allowed as between attorney and client in a suit or matter, and any appeal or other proceeding in connection therewith. The fee allowed for the warrant shall include all attendances for executing, authenticating or filing the same.

66. In every case of taxation as between attorney and client, the client shall be duly summoned by the Taxing Officer to attend the taxation, unless the Taxing Officer shall, in the exercise of his discretion, see fit to dispense with such attendance. And the Taxing Officer is particularly directed, in all cases in which it can be done, to see the client himself and, as far as possible, to avoid the intervention of agents.

Reading Rule 14 with this rule the result is, that, even when a bill is brought in to be taxed as between party and party, notice will go both to the opposite party and to the client. The reason why both parties are summoned is because, in this country, a bill of costs as between party and party contains all the charges in the suit; those usually allowed as costs in the cause, as well as those for which a successful client is liable to his attorney, but which he is not entitled to recover from his adversary. The taxation being of a double character, the object is, to bind both parties. [B]

Amount of general and special retainers.

67. In taxing the bills of attorneys as between attorney and client the Taxing Officer shall allow no other or larger general retaining fee than five gold

mohurs, nor allow the same to be repeated oftener than once every twelve months, and no other or larger fee than two gold mohurs as a special retaining fee, although such fees may have been given by the special orders or directions of the client himself. No retaining fee to counsel shall be allowed on taxation as between party and party. [B. 502.]

68. Except as between attorney and client, no allowance shall be made for attending a deponent to read over and settle an affidavit. Allowance for attending a deponent. [M. 42.]

69. As between attorney and client the Taxing Officer may allow for the actual work done and time occupied in respect of each item and shall not necessarily be limited by the amounts herein allowed as between party and party. Allowance for actual work done and time occupied. [M. 62.]

70. Any party who may be dissatisfied with the allowance or disallowance by the Taxing Officer, in any bill of costs taxed by him, of the whole or any part of the items, may apply to the Taxing Officer to review the taxation in respect of the same. Such application, of which four days' notice shall be given to the opposite party, shall be made within a week from the date of the passing of the bill in the Taxing Office. Objections in writing, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, shall be served with the notice on the opposite party and a copy thereof shall at the same time be carried in before the Taxing Officer. The Taxing Officer may, where he shall think fit, issue, pending the consideration of such objections, a preliminary allocatur for or on account of the remainder of the bill of costs, and such further allocatur as may be necessary shall be issued by the Taxing Officer after his decision upon such objections. Review by the Taxing Officer, and issue of preliminary allocatur. [New.] [Cf. B. 524.]

71. Upon such application the Taxing Officer shall reconsider and review his taxation upon such objections, and he may, where he shall think fit, receive further evidence in respect thereof, and in a certificate shall state, by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. Hearing of application for review by the Taxing Officer. [Cf. B. 526.]

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Review of
taxation by
a Judge.

[*Cf. B. 526.*]

72. Any party, who may be dissatisfied with the decision of the Taxing Officer as to any item, or part of an item which may have been objected to as aforesaid, may, not later than seven days from the date of the decision, or within such further time as the Taxing Officer or Judge may allow, apply to a Judge in Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to him may seem just; but the taxation of the Taxing Officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Hearing of
application
for review by
a Judge.

[*B. 527.*]

73. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the Taxing Officer, and no further evidence shall be received upon the hearing thereof unless the Judge shall otherwise direct.

Fees to be
taken in
different juris-
dictions.

[*Cf. C. 802.*]

74. Except as otherwise specially provided in these rules, or by any law in force made by competent legislative authority for India, the fees of Court to be taken in all proceedings in the respective jurisdictions indicated in the headings to the first, second, third, and fourth of the following schedules shall be those set forth in such schedules respectively:—

THE FIRST SCHEDULE.

ORIGINAL CIVIL JURISDICTION.

Rs. a. p.

	1. Order for admission of advocate or attorney	10	0	0
	2. On presentation of plaint or of case stated under section 90 and O. XXXVI, r. 1 of the Code	10	0	0
[<i>New.</i>]	3. Special case under the Indian Arbitration Act or any other enactment	10	0	0
[<i>New.</i>]	4. Filing and registering written statement	2	0	0
[<i>New.</i>]	5. Filing and registering written statement pleading a set-off or containing a counter-claim	10	0	0
[<i>New.</i>]	6. Reply to a counter-claim	2	0	0
[<i>New.</i>]	7. Entering in register of suits name of representative of a deceased party or of substituted or added party, per folio	0	8	0
	8. Petition to proceed <i>in formâ pauperis</i> including filing	0	8	0

Rs. a. p.

9. Summons to defendant or notice to a judgment-debtor or his representatives or to a respondent to a petition or to a memorandum of appeal, each . . .	2	0	0
10. Authority to sue or defend . . .	3	0	0
11. Filing every document for which a filing fee is not specially provided, including documents annexed thereto as exhibits, if any, or produced with plaint, or used in evidence, each document . . .	2	0	0
NOTE.—Not to be charged twice in the same suit.			
Vouchers to be treated as forming one document with the bill or account to which they relate.			
Entries in a book to be treated as forming one document with the book.			
12. For examining and comparing copies of documents with the original under O. VII, rr. 14 and 17 of the Code—For each of the first five documents . . .	1	0	0
For every other document . . .	0	8	0
13. Every application to the Court or a Judge or an officer either before or after decree not specially provided for . . .	5	0	0
14. Every requisition under Chapter XVI, rule 27, to draw up an order including fee for filing both the requisition and order . . .	7	0	0 [New.]
15. Petition for leave to appeal to His Majesty in Council . . .	0	0	0 [New.]
16. Every requisition under Chapter XVI, rule 27, to draw up an order granting or refusing leave to appeal to His Majesty in Council including fee for filing both the requisition and order . . .	20	0	0 [New.]
17. Petition to declare appeal to His Majesty in Council admitted including filing . . .	10	0	0 [New.]
18. Every requisition under Chapter XVI, rule 27, to draw up an order declaring appeal admitted including fee for filing both the requisition and order . . .	20	0	0 [New.]
19. Filing judgment and decree of the Privy Council, each . . .	2	0	0
20. Every warrant of arrest or attachment and every writ or process in execution of or to enforce a decree or order . . .	5	0	0
21. Every certificate or report of a Judge or an officer of the Court on an enquiry or reference or on review of taxation made after a single meeting . . .	5	0	0
For every meeting after the first . . .	2	8	0
22. Every other certificate for which a fee is not specially provided . . .	2	0	0

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[New.]

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
23. Every certificate to accompany exemplification of any document or proceedings to be transmitted to England or elsewhere beyond the limits of the Presidency .	10	0	0
24. Commission to examine witnesses or other Commission	6	0	0
25. For production before a Judge or an officer of this Court by any officer of Court, at the hearing of any matter other than the hearing of a suit, of the records of the same suit or matter	2	0	0
26. For production before a Judge or an officer of this Court by any officer of Court, at the hearing of any suit or matter, of the records of any other suit or matter .	3	0	0
27. For production by an officer of Court in any other Court of the records of any suit or matter, exclusive of travelling expenses	5	0	0

[New.]

NOTE.—When the fee for production is charged, no fee for searching is to be charged and no further fees for production shall be charged unless the hearing of the suit, application or matter is postponed for more than a fortnight.

[New.]

28. For production by post (exclusive of postage, registration and insurance fees)	3	0	0
29. For every attendance on parties or their attorney inspecting books and papers deposited in Court for inspection . . .	3	0	0
30. For enquiring into the sufficiency of security in other than administration matters .	5	0	0

[New.]

NOTE.—Not to be charged to officers of Court who have to give security for the due performance of their duties.

31. For every search or examination of records where no certificate or office or certified copy or a fee under item 12 above is taken, per day	2	0	0
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NOTE.—This fee is not to be charged to a witness (not a party to the suit) applying for the return of documents produced by him.

32. Every oath or affirmation administered to a witness	2	0	0
33. For reducing into writing the deposition of each witness, for each folio . . .	0	8	0
34. For every day or part of a day in which the Court is occupied in trying a case (including appeals from Original Jurisdiction) after the first day	20	0	0

If C. A. V. this fee not to be charged on the day when judgment is delivered.

Rs. a. p.

35. Every summons or notice to proceed on a reference	1	0	0 [New.]
36. Settling and signing every advertisement for creditors	3	0	0 [New.]
37. For every day or part of a day in which the Court is occupied in taking the examination of witnesses, under Mandamus or Commission sent to this Court for execution	20	0	0
38. Every final decree, where the amount decreed does not exceed Rs. 1,500	8	0	0
Where it exceeds Rs. 1,500, but does not exceed Rs. 2,500	12	0	0
Where it exceeds Rs. 2,500, but does not exceed Rs. 5,000	16	0	0
Where it exceeds Rs. 5,000	20	0	0
In other cases	16	0	0
39. Decree for the defendant where the suit is dismissed	5	0	0
40. Decree for the defendant in suits in which a set-off is pleaded and balance awarded in favour of the defendant, <i>ad valorem</i> upon the amount of such balance, the same as in decrees for plaintiff.			
41. Filing memorandum of appeal in suits for debt or damages where the amount to which the appeal relates does not exceed Rs. 1,500	16	0	0
Where it exceeds Rs. 1,500, but does not exceed Rs. 2,500	24	0	0
Where it exceeds Rs. 2,500, but does not exceed Rs. 5,000	32	0	0
Where it exceeds Rs. 5,000	50	0	0
In other cases	32	0	0
42. Every decree for plaintiff on appeal, in which the decree of the lower Court was in favour of the defendant, <i>ad valorem</i> upon the amount decreed, as in original suits.			
43. Every decree for plaintiff on appeal, where the amount decreed in the lower Court is increased on appeal, <i>ad valorem</i> upon the amount of such increase, as in original suits.			
In other cases	16	0	0
44. Each petition of review of judgment, decree or order including filing	10	0	0 [New.]
45. Cross-objections under O. XLI, r. 22 of the Code	5	0	0 [New.]

		Rs.	a.	p.
	46. Every exemplification of decree or other document in addition to the folios and other charges	10	0	0
	47. For duplicate and other copies of any document, per folio	0	8	0
[New.]	48. For amending plaint or other proceedings under order of Court (amendment not exceeding 1 folio)			6
	Every other folio			8
[New.]	49. Upon all monies paid to the Registrar (otherwise than for sale deposit) or deposited with him as security or in lieu of bail, a commission of 1 per cent., and $2\frac{1}{2}$ per cent. on interest drawn on invested monies.			
	50. On every sale, conducted by or made with the approval of the Registrar or other officer conducting the sale, a commission of 10 per cent. on the first thousand and $2\frac{1}{2}$ per cent. on the rest of the purchase-money.			

Interpreters and Translators.

51. For every written translation, per folio	2	0	0
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The fee to be charged on the number of folios contained in the original document.

When different portions of *Khatta* books are translated, the translation fee is to be charged as if each portion was a separate document.

Taxing Office.

	52. For every summons by the Taxing Officer	2	0	0
	53. For every certificate by the Taxing Officer	1	0	0
[New.]	54. Taxing each bill not exceeding 10 folios	5	0	0
[New.]	55. For every other folio	0	8	0
[New.]	56. Registering every bill of costs	1	0	0
	57. For every special certificate of allowance, where required	£	0	0

NOTE.—For fee on certificate on review of taxation, see item 21.

Accountant-General.

58. Upon all monies paid into Court with the privy of the Accountant-General, 1 per cent., and upon all interest accruing thereon, $2\frac{1}{2}$ per cent. Provided that no single charitable or educational endowment of a public character be charged more than Rs. 100 per annum.

	Rs.	a.	p
59. For entering and countersigning decree or order for the payment of money . . .	0	0	
60. For making and entering every certificate to be annexed to such decree or order .	10	0	
61. For every search where no certificate is required	0		
62. For every certificate of funds in Court . . .	0		

NOTE 1.—No commission is to be charged upon monies paid into Court by the Official Receiver of the Court.

NOTE 2.—No fee except commission is to be charged where the original amount paid in Court does not exceed Rs. 400, or in respect of payments made to suitors periodically.

THE SECOND SCHEDULE.

TESTAMENTARY AND INTTESTATE JURISDICTION.

1. For every petition	4	0	0
2. For every citation	2	0	0
3. Filing inventory, if not exceeding 3 folios	1	0	0
For every additional folio	0	5	0 [New.]
4. Filing accounts of executors and administrators, if not exceeding 3 folios .	1	0	0
For every additional folio	0	5	0
5. For registering every will not exceeding 5 folios	2	0	0
For every additional folio	0	8	0
6. For searching after any will filed of record or in respect of the estate of a deceased person, where such search has to be made by an officer of the Court, per year searched	8	0	[New.]
7. For searching after and inspection of any administration, inventory or account .	0	0	

THE THIRD SCHEDULE.

MATRIMONIAL JURISDICTION.

1. Plaint or memorandum of appeal, in a suit to obtain possession of a wife .	5
2. Marriage license	17

Before this fee was sanctioned, the question as to the power of the Court to issue marriage licenses was raised by the Government, and considered by the Judges. See letter from the Government No. 1584, dated 18th September 1873; and the Court's reply No. 17, dated 13th January 1874. [B] The Court's reply was based upon a Minute written by Mr. Justice (afterwards Sir Arthur) Macpherson, which is on record with the above letters, as to the power to issue such licenses.

THE FOURTH SCHEDULE.

ORIGINAL CRIMINAL JURISDICTION.

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
1. Every writ for which a fee is not specially provided	4	0	0
2. Precepts for special and petty jurors	4	0	0
3. Every recognizance and respiting the same, each	3	0	0
4. For each bail	2	0	0
5. For entering appearance of a defendant	2	0	0
6. Every order minuted, but not drawn up	1	0	0
(The stamp to be affixed on a copy of the minute.)			
7. For every order drawn up and issued	4	0	0
8. For drawing any document or instrument for which a fee is not specially provided, per folio	0	8	0
9. For filing every document for which a fee is not specially provided	1	0	0
10. For every search or examination of records when no certificate or copy is taken	1	0	0
(The stamp to be affixed on the requisition.)			
11. For every subpoena to give evidence or produce documents	2	0	0
(Not to be charged to prisoners applying for subpoena through the Superintendent of the Jail.)			
12. For production at the hearing of a case of the records in any other case	3	0	0
(Where this fee is charged no fee for searching is to be charged.)			
13. Every certificate for which a fee is not specially provided	2	0	0
14. For copies of documents for which a fee is not specially provided, per folio	0	5	0
15. Every petition of appeal	10	0	0
16. Every Judge's certificate to accompany the appeal	5	0	0
17. Production by an Officer of Court in any other Court of the records of any suit or matter, exclusive of travelling expenses	5	0	0

NOTE.—Where the fee for production is charged, no fee for searching is to be charged and no further fees for production shall be charged unless the hearing of the suit, application or matter is postponed for more than a fortnight.

[New.]

18. Production by post (exclusive of postage, registration and insurance) 3 0 0

[New.]

Rs. a. p.

Fees for proceedings commenced by information.

19. For signing every information	8	0	0
20. For subpoena to answer	3	0	0
21. For joining issue	2	0	0
22. For recording verdict	2	0	0
23. For entering confession, acquittal, or discharge	4	0	0
24. For drawing record:—			
for the first folio	2	0	0
for every other folio	1	0	0

NOTE.—The fees for all other proceedings on information to be regulated by the other items of this table.

Fees of Court.—For the power of the Court to settle these fees, see 24 & 25 Vict., c. 104, s. 15, *ante*, p. 62.

By section 3 of the Court Fees Act (VII of 1870), the fees payable for the time being to the clerks and officers (other than the Sheriff and attorneys) of the High Courts are to be collected in manner thereafter appointing. See Chapter V of that Act. Section 25 provides that all fees referred to in section 3 shall be collected by stamps.

By section 27 the Local Government may from time to time make rules for regulating the supply, number, renewal and keeping of accounts of stamps, provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

The only rules framed by the Local Government with such concurrence are to be found in Appendix P, *post*, p. 545.

The Rules on pp. 44—54 of the Bengal Stamp Manual for 1912 do not appear to have been made with the concurrence of the Chief Justice.

75. The first of the said schedules shall, except as to fees specially provided in the second and third of the said schedules, apply to all proceedings, testamentary and intestate and matrimonial, and shall also apply to all proceedings in appeal from the Original Civil Jurisdiction of the Court.

Special application of the first schedule

76. The fourth of the said schedules shall apply to all proceedings in appeal from the Original Criminal Jurisdiction of the Court, as well as to all other proceedings in such jurisdiction.

Special application of the fourth schedule.

[C. 804.]

77. The fees to be allowed to the Sheriff and his officers shall be as follows:—

Fees to Sheriff
[C. 804.]

Rs. a. p.

1. For arresting each person named in a writ when nothing is realised	16	0	0
Otherwise	2	0	0

(The latter to be allowed *plus* poundage on sums levied.)

		Rs.	a.	p.
	2. For executing any attachment against moveable or immoveable property .	2		
	3. For serving each jurymen with summons (To be charged to the Contingent Fund.)	2		
	4. For serving every other summons, for each person served	2	0	0
	5. For executing every order or warrant in the nature of a writ of <i>Habeas Corpus</i> , every order in the nature of a writ of injunction or other order or writ for which a fee is not specially provided, for each person against whom the writ or order is directed	2	0	0
	6. For executing warrants for apprehension of witnesses, and warrants for security to be furnished by defendant (issued by another Court for each person) . . .	4	0	0
[New.]	7. For receiving and filing every copy of a Judge's order or other document to be filed in his office	1	0	0
	8. For serving summons, notice, proclamation, subpœna, etc. (issued by another Court) for each person or property on whom service is effected	2	0	0
	9. For serving citation	2	0	0
	10. For every ordinary return	1	0	0
	11. For every special return	2	0	0
	12. For translations when necessary, per folio	0	8	0
	13. For every warrant to discharge defendant from custody	2	0	0
	14. For bringing up defendant from jail after remand	2	0	0
	15. For every certificate of seizure	5	0	0
	16. For every other certificate	2	0	0
	17. For drawing every security bond in Mofussil cases	8	0	0
	18. For office copies, per folio	0	8	0
	19. For attending Court or before a Judge or officer of Court with papers	3	0	0
	20. For every bond of indemnity for seizing property, etc., when there are adverse claims	32	0	0
	21. For every search, when no certificate or office copy obtained	1	0	0

Rs. a. p.

22. Poundage on sums levied by the Sheriff in execution or in the event of the claim being satisfied, compromised or settled, upon the amount of such satisfaction, compromise or settlement for the first 1,000 rupees at 5 per cent. and for the rest at 2½ per cent.			
23. Poundage on a writ of possession, upon every 10 rupees of the yearly value . . .	0	8	0
24. For attending Court during each criminal sessions, per diem	16	0	0
(To be charged to the Contingent Fund.)			
25. For attending at a sale other than in the Sheriff's office	16	0	0 [New.]
26. For the crier at every Sheriff's sale (when the sale is not at the Sheriff's office), exclusive of the cost of conveyance, if the same is not provided by the party requiring the same	2	0	0 [New.]
27. For every man absolutely required and left in possession of property attached, the amount actually paid per diem as wages or a reasonable amount thereof.			
28. For removal of moveable property attached, to the Sheriff's office when necessary :—Actual expenses.			[New.]

Bailiff for serving summons, executing process, etc.

	European.	Native.	Fees to Bailiff.
	Rs. a. p.	Rs. a. p.	
For serving summons as to defendants residing in the same house where served personally, or where service effected by delivery of the summons to one person,—			
for the first defendant	4	0	0
for every other defendant	2	0	0
for serving summons by fixing a copy to the door of the dwelling-house, for all the defendants residing in the same house who may be thus served	6	0	0

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	European. Rs. a. p.	Native. Rs. a. p.
2. In other cases for serving each defendant . . .	4 0 0	0 8 0
3. For service of citation . . .	2 0 0	1 0 0
4. For arresting a party . . .	16 0 0	4 0 0
5. For bringing him up before the Court when the Sheriff's officer is detained in Court for three hours and upwards	8 0 0	2 0 0
6. Otherwise	4 0 0	1 0 0
7. Where the party is arrested after the rising of the Court, for bringing him up before the Court on the following day, and lodging him in jail after committal	8 0 0	2 0 0
NOTE.—This fee is to be reduced to Rs. 4 and Re. 1, where the party on being brought up should be released.		
8. Where the party is released upon security to appear on another day, for attending the Court to take him into custody	4 0 0	1 0 0
9. For lodging him in jail, where committed	4 0 0	1 0 0
10. For every affidavit of service of summons	2 0 0	0 8 0
11. For attaching moveable property	16 0 0	...
12. Where, owing to the number and nature of the articles attached, it is impossible to make a detailed list of them at the time of seizure:—for making an inventory—in the discretion of the Taxing Officer—not exceeding	16 0 0	.
13. For attaching or giving possession of immoveable property, for the first parcel	16 0 0	...
14. For every other parcel	2 0 0	...
15. For attending before a Judge at his house	10 0 0	2 8 0

[New.]

European.
Rs. a. p.Native.
Rs. a. p.*(Process of other Courts.)*

16. For serving or executing process specified in this schedule as herein provided.
17. For serving every notice, summons to a witness and other judicial process not specified in this schedule, for each person served . . . 2 0 0 1 0 0
18. For proclamation of sale in mortgage suit, for posting a copy in the premises and a copy in the Court house . . . 4 0 0 2 0 0 [New.]

78. Except as provided in rule 108, or unless otherwise ordered, the fees to be allowed to Arbitrators, Commissioners of partition, or for the examination of witnesses *de bene esse*, Clerks, Counsel, Interpreters and Surveyors, shall be as follows :—

Arbitrator's or Commissioner's fees.

Gold mohurs.

For every effectual meeting 5

Clerk's fees.

For every effectual meeting 2

Counsel's fees.

For every single meeting 5

For every double meeting 7

(Above four hours, a double meeting.)

Interpreter's fees.

For every effectual meeting 2

Surveyor's fees.

For every effectual meeting where the Surveyor's attendance is certified as necessary by the Commissioner or in cases of Registrar's sales by the Registrar not exceeding . . . 2

[New.]

For reporting, preparing plan and valuation, as agreed by the parties or certified by the Commissioner or in cases of Registrar's sales by the Registrar.

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Fees for
explaining
plaints, etc.
[*Cf. Bel., R.
and O., p.
364.*]

79. The fees to be taken by Interpreters, for explaining at the house of the suitor, or any place other than the Court house, plaints, written statements, or other documents except affidavits or affirmations, shall be as follows :—

	<i>Rs. a. p.</i>
Where not exceeding 20 folios	8 0 0
Exceeding 20 folios	16 0 0

Fees for
taking bonds,
affidavit, etc.
[*Old : alter-
ed.*]
[*Cf. Bel., R.
and O., p.
364.*]

80. Except as otherwise provided in these rules, or unless otherwise ordered, the fees to be allowed to the Registrar or Assistant Registrar deputed by him for taking bonds, or to Commissioners and Interpreters for taking affidavits or affirmations at the house of the suitor, or any place other than the Court house, shall be as follows :—

Registrar's or Commissioner's fees.

	<i>Rs. a. p.</i>
For the first affidavit, oath or affirmation, or bond, where within the limits of Calcutta	16 0 0
Where beyond the limits of Calcutta and within 5 miles	32 0 0
For every affidavit, oath or affirmation or bond taken at the same time and place after the first in the same suit, appeal or matter	8 0 0

NOTE.—If no case shall the Registrar or a Commissioner be allowed, for taking any number of affidavits, oaths or affirmations or bonds at the same time and place, more than five gold mohurs, where such place is within the limits of Calcutta; or more than six gold mohurs, where such place is beyond the said limits, and within the distance of five miles.

Interpreters are to be allowed half the fees allowed to Registrars or Commissioners.

Allowances
to witnesses
per diem.

[*Old : alter-
ed.*]
[*Cf. Bel., R.
and O., p.
365.*]
[*Cf. C. 807.*]

81. The allowances to be made to witnesses per diem shall be as follows :—

TABLE.

	CLASS.			
	First.	Second.	Third.	Fourth.
	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
1. Professional men	20 0 0	16 0 0	8 0 0	4 0 0
2. Merchants, Managers of Banks, Zemindars, gentlemen of property	20 0 0	16 0 0	8 0 0	4 0 0

	CLASS.			
	First.	Second.	Third.	Fourth.
	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
3. Editors, Engineers and Surveyors . . .	16 0 0	12 0 0	6 0 0	3 0 0
4. Auctioneers, Brokers, Professional Accountants, Members of Trading Firms . . .	16 0 0	12 0 0	4 0 0	...
5. Officers in Civil employ drawing not less than Rs. 500 a month, according to rank . . .	16 0 0	12 0 0	8 0 0	...
When drawing less than Rs. 500 a month . . .	6 0 0	4 0 0	2 0 0	...
6. Military, Naval and Police officers, according to rank . . .	16 0 0	12 0 0	8 0 0	...
7. Shroffs, Banians, Assistants in Mercantile Firms or Banks, Schoolmasters, Commanders or officers of ships . . .	12 0 0	8 0 0	4 0 0	2 0 0
8. Articled and other clerks, Assistants in Trading Firms, Police Inspectors, petty officers, Military and Marine . . .	6 0 0	4 0 0	2 0 0	...
9. Customs officers, Engine drivers . . .	6 0 0	4 0 0	...	...
10. Godown Sircars . . .	4 0 0	2 0 0	...	...
11. Sircars, Mohurirs, labourers, carriers, domestic servants, etc. . .	2 8 0	1 0 0	0 12 0	...
12. Females, according to station in life . . .	5 0 0	2 0 0	1 0 0	...
13. To produce a document only . . .	2 0 0	2 0 0	2 0 0	2 0 0
14. Expert or scientific witnesses—				
(a) For qualifying to give evidence . . .	—	—	As may be ordered by the Court or Judge or allowed by the Taxing Officer.	
(b) Attending Court on trial, per diem . . .				

Expert or scientific witnesses.—For cases under the corresponding English practice see Scott, p. 1016.

Government servants.—See Articles 1183 and 1184 of the Civil Service Regulations. An officer summoned to give evidence must credit the Government with the allowances (other than travelling expenses) which he receives under the rules of the Court.

82. The names of all witnesses required by any one party to attend at the hearing of a suit or matter Names of all witnesses in one appli-

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R. 62-68.**

ation; more
than one on
good ground.
[*Cf. C. 783*
last portion.]

Allowance
to a witness
who is a
party.
[*M. 66.*]

Costs where
witness is
summoned
but not ex-
amined.
[*Cf. M. 68.*]

Witnesses
in different
causes.
[*(Old) Bel.,*
R. and O.,
p. 365.]

Witnesses
of Calcutta.
[*(Old) Bel.,*
R. and O.,
p. 365.]

Determina-
tion of class
by Taxing
Officer.
[*(Old) Bel.,*
R. and O.,
p. 365.]

Time for
payment of
travelling
expenses
and fees.
[*Cf. B. 169.*]

shall be inserted in one application and, where more than one application is taken out and charged for, the attorney must satisfy the Taxing Officer that there was good ground for taking out such further application.

83. Where the witness is a party to the suit or matter, he shall not be entitled to any allowance, except for travelling, unless he has been subpoenaed by another party to give evidence or the Court or Judge otherwise orders.

84. Where it appears to the Taxing Officer that they have been reasonably and properly incurred, he may, in his discretion, allow the fees and expenses of witnesses who have been summoned but not examined and also the attorney's costs in connection therewith.

This is the English practice, the allowance of costs of witnesses not called, being in the discretion of the Taxing Officer. See cases cited in Scott, p. 1017.

85. Where the witnesses attend in one cause only, they will be entitled to the full allowance. Where they attend in more than one cause, they will be entitled to a proportionate part in each cause.

86. Witnesses residing out of Calcutta will be allowed travelling expenses according to the sums reasonably and actually paid, and will also, where detained in Calcutta, be allowed such a sum for subsistence money and carriage hire as the Taxing Officer, having regard to the daily allowances fixed by the scale, shall consider reasonable.

87. The Taxing Officer will decide the class to which the witness belongs.

88. Every person summoned to give evidence at the Civil Side of the High Court shall have tendered to him with the summons a reasonable sum for his travelling expenses (if any) for coming to Calcutta and for the first day's attendance, and shall, if obliged to attend for more than one day, be entitled, before giving his evidence, to claim from the party by whom he shall have been summoned the allowances and

expenses at the rates specified in rule 81 for each additional day that he may be required to attend.

89. Any person who shall refuse to state to the attorney of the party summoning him, or to his clerk, the substance of the evidence he can give, shall not be entitled to the above expenses without special order of the Court. When dis-
entitled to
allowance.
[B. 160.]

90. Witnesses in civil suits, who have not been paid such reasonable sum for their expenses as the Court allows by its rules, may apply to the Court at any time in person to enforce the payment of such sum as may be awarded them. Enforce-
ment of pay-
ment of ex-
penses.
[B. 161.]

See note to clause 13 of the Charter, *ante*, p. 24.

91. Except as otherwise specially provided in these rules, the following fees shall be allowed to attorneys :— Attorney's
fees.
[Cf. C. 817.]

GENERAL FEES.

Authority.

	<i>Rs. a. p.</i>
1. To sue or defend	2 0 0

Instructions.

2. For special affidavits, petitions, claims, states of fact, Rs. 5 to	10 0 0
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(Not to be allowed for affidavit or affirmation made by the attorney or his clerk.)

Drawing.

3. (a) Conveyances and other Instruments as defined by the Indian Stamp Act, in any suit or proceeding in Court, per folio	2 0 0
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(Approving same—half the drawing charge.)

(b) Affidavits, petitions and all other necessary documents [other than those mentioned in (a) or otherwise specially provided for] as may be allowed by the Taxing Officer exclusive of copies insert- ed therein, up to 10 folios	5 0 0
Above 10 folios, per folio	0 8 0

4. Security or bail-bond, Rs. 5 to	10 0 0
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[New.]

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[New.]

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
5. Notice of motion, and other necessary notices except notice to witnesses (as may be allowed by the Taxing Officer), Rs. 5 to	10	0	0
6. Notice of action when required by any special or local law, Rs. 10 to	20	0	0
7. Abstract of title to properties to be sold by an officer of the Court other than the Sheriff, per folio	1	0	0
8. Conditions of sale	10	0	0
9. Advertisement	5	0	0
10. Requisitions on title and answers thereto, Rs. 5 to	30	0	0
11. Observations for counsel to accompany brief of proceedings on special application, for further directions, or an appeal, or for cross-examination of witness to be examined on commission or <i>de bene esse</i> , or for purpose of reference, where necessary (as may be allowed by the Taxing Officer), Rs. 5 to	10	0	0
12. Particulars of demand or of set-off, from Rs. 2-8 to	10	0	0

NOTE.—The fee for drawing a document in all cases includes a copy, if required for the use of the attorney or for settlement by counsel.

Copies.

13. Of all documents, per folio	0	6	0
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Service.

14. Serving every necessary notice, summons to a witness or other judicial process which may be served by an attorney, where in Calcutta	2	0	0
Beyond the local limits (besides expenses actually incurred), per day	5	0	0

Attendances.

15. On presentation of plaint	10	0	0
16. Receiving, filing or depositing any statement or papers, from or in any of the offices of the Court	1	0	0
17. Every attendance before the Court or Judge or an officer of the Court, not otherwise provided for (at the discretion of the Taxing Officer), Rs. 2-8 to	5	0	0

Rs. a. p.

18. Every application for summons to witnesses unless special, or for summons to parties to a suit	2	0	0	
19. Every other application to the Court or Judge or the Registrar or Master before or after decree, for every attendance to oppose or consent to the same, in the discretion of the Taxing Officer, having regard to the nature of the application, Rs. 5 to	10	0	0	
20. For every attendance on the client, or the opposite party, at the office of the attorney of either party where a letter would not suffice, Rs. 5 to	10	0	0	
Where a letter would suffice, Rs. 2 or	3	0	0	
21. Receiving and perusing every necessary letter	2	0	0	
22. Perusing documents received from the opposite party or obtained from Court where necessary, in the discretion of the Taxing Officer, each	5	0	0	[New.]
[NOTE.—Not to apply where the same attorney acts for both parties.]				
23. Receiving service of notices, orders, etc.	2	0	0	
24. Attending client on execution of security bond at the attorney's office or house, or at the Court house	2	8	0	
25. Attending Court upon the swearing of every necessary affidavit (including the attendance upon the Interpreter to have the same explained)	2	0	0	
26. All necessary attendances, inspecting documents, books and accounts before and after decree, per hour	2	8	0	
Where attendance of attorney or his principal clerk is required, per hour	10	0	0	
27. Searches in the High Court—				
Common	2	0	0	
Special, Rs. 2-8 to	7	8	0	
(Other searches will be treated as attendances under rule 97, items 5 and 6.)				[New.]
28. Investigating old and difficult titles for purposes of an abstract of title to properties to be sold by an officer of the Court other than the Sheriff, where such officer certifies that such investigation is special and comes within this item, in the discretion of the Taxing Officer, Rs. 32 to	80	0	0	[New.]

29. Attending counsel with brief or instructions	2	0	0
30. Attending counsel paying or marking additional fee	2	0	0
31. Attending counsel fixing time for consultation or conference	2	0	0
32. Where suit, motion or reference is in the peremptory list for hearing and before it is called on, per day	2	8	0
33. Attending Court to hear judgment delivered, where judgment is not delivered at the end of the hearing	10	0	0
34. Attending taxation, per hour	5	0	0
35. Attending before (1) a Judge at a hearing adjourned into Chambers to take account or enquiry, or (2) before the Registrar, Master or other Referee, on reference, or (3) on review of taxation before the Taxing Officer, per hour	10	0	0

(Where counsel engaged, then half the above rate.)

36. Attending on local enquiry or Commission to examine parties or witnesses <i>de bene esse</i> , or for partition, or before a Receiver on letting property, or to take or deliver possession, per hour	2	8	0
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[New.]

Where attendance of attorney or his principal clerk is required, per hour Rs. 10 to	16	0	0
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Where beyond $\frac{1}{4}$ th of a mile from the Court house and within the local limits of Calcutta an additional fee for going and returning, Rs. 20 to	30	0	0
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For every extra mile or portion of a mile beyond the local limits and within 20 miles, additional to cover travelling expenses and loss of time, per mile, provided the total amount including the fee for going and returning shall not exceed five gold mohurs	5	0	0
--	---	---	---

Where beyond 20 miles, in the discretion of the Taxing Officer but not exceeding five gold mohurs per day or eight gold mohurs per day and night, in addition to all expenses incurred and including the fee for going and returning.

Interest.

37. Money properly paid or advanced out of pocket for the client for fees of Court, fees to counsel or stamps, or fees to the Sheriff, interest thereon at 6 per cent.

Letters.

38. Of demand before suit 5 0 0
 39. To witnesses, for each witness served 2 0 0

(Not to be allowed except after the adjournment of a case or where actually necessary.)

40. Of instructions to agent where, when a Commission has issued for examining a witness abroad, it may appear to the Taxing Officer that the attorney could not reasonably be expected to attend 8 0 0
 41. Every other necessary letter 3 0 0

Translations.

42. All necessary translations made at the office of the attorney, per folio 0 8 0

92. Where the plaint or written statement is printed, the fees payable to the attorneys shall, so far as possible, correspond to the fees payable in respect of paper-books in appeals from the Original Jurisdiction, under these rules. Fee for printed pleadings. [New.]

93. The following fees shall be allowed to the attorneys with reference to the importance and difficulty of the case; but unless the class under which the case falls is determined by the Court, the costs will be taxed under class 1 :— Fees with reference to importance and difficulty of cases : to be taxed on scale 1, if no higher scale fixed. [Cf. Bel., R. and O., p. 381.]

<i>Instruction.</i>	Class 1. Short Causes.	Class 2. Ordinary Causes.	Class 3. Important Causes.
	Rs.	Rs.	Rs.
1. To sue or defend	10	25	50

NOTE.—The fee for instructions at the commencement of a proceeding includes all attendances upon or correspondence with client for completing the instructions, except attendances at the client's request at any place other than the attorney's office or house.

		Class 1. Short Causes.	Class 2. Ordinary Causes.	Class 3. Important Causes.
	<i>Instruction—contd.</i>	Rs.	Rs.	Rs.
	2. For statement of questions of law or fact agreed on under section 90 and O. XXXVI, r. 1 of the Code where drawn by counsel . . . . .	...	15	20
[New.]	3. For plaint or written statement where drawn by counsel	15*	15	20
	4. For interrogatories when drawn by counsel . . . . .	...	5	8
	<i>Drawing.</i>			
[New.]	5. Statement of questions of law or fact agreed on under section 90 and O. XXXVI, r. 1 of the Code, at the discretion of the Taxing Officer	10	15	30
	6. Plaints and written statements at the discretion of the Taxing Officer		to 30	to 50
	7. Petition for leave to appeal to His Majesty in Council . . . .	...	25	50
	8. Interrogatories for the examination of witnesses	5	10	16

NOTE.—Items 5, 6, 7 and 8 are not to be allowed, where counsel's fee for drawing is allowed.

9. Brief for trial	10	25	50
10. Bill of costs	5	10	25
<i>Conferences.</i>			
11. Conference with counsel . . . .	...	10	10

NOTE.—Where no fee is paid to counsel on a conference, no charge can be allowed to the attorney for his attendance.

* In special actions only.

	Class 1. Short Causes.	Class 2. Ordinary Causes.	Class 3. Important Causes.
<i>Consultations.</i>	Rs.	Rs.	Rs.
12. Consultation . . . .	...	10	10
<i>Perusals.</i>			
13. Perusing papers for trial at the discretion of the Taxing Officer, not exceeding . . . .	...	75	100
14. Perusing accounts for investigation, half the fee allowed or which it would be proper to allow for the preparation thereof.			[New.]
<i>Collecting evidence.</i>			
15. Collecting and taking down evidence at the discretion of the Taxing Officer, not exceeding . .	...	50	75
<i>Attendance.</i>			
16. During the hearing on settlement of issues, or final disposal, or further directions, each day .	10	25 to 50 at the discretion of Taxing Officer.	50

94. The fees mentioned in rules 91 and 93 are the rates to be allowed upon taxation as between attorney and client, or as between party and party, but it will be for the Taxing Officer, in every case, to decide whether the particular business charged for, or monies advanced, are to be allowed as between party and party, or as between attorney and client.

(Classification of party and party or attorney and client—discretion of Taxing Officer.
[(Old) Bel., R. and O., p. 383.]

95. Where it shall be made to appear to the satisfaction of the Court that the fee ordinarily allowed under the headings 9, 13, and 15 in rule 93 will not be sufficient to indemnify the party, plaintiff or defendant, against the costs necessarily incurred by him, and

Special direction for increased fees.
[(Old) Bel., R. and O., p. 381.]

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rr. 95—97.

that such fees ought to be increased, it shall be lawful for the Court to give special directions as to the fees falling under these heads as to the Court may seem fit.

96. The directions mentioned in rule 95 ought to be obtained at the hearing of the suit. Where applied for afterwards, the costs of the application shall, unless otherwise ordered, be borne by the applicant.

When
such direc-
tions to be
obtained.

[(Old) *Bel.*,
R. and O.,
p. 381.]

Costs only
as between
attorney
and client.

[(Old) *Bel.*,
R. and O.,
p. 383.]

97. The following costs may be allowed as between attorney and client, but are not to be allowed upon taxation as between party and party except as provided in rules 98 and 99:—

Rs. a. p.

- | | | | |
|---|----|---|---|
| 1. Conference with counsel before appeal, if sanctioned or directed by the client | 10 | 0 | 0 |
| 2. Other conferences with counsel not allowed as between party and party costs, where such conference is sanctioned or directed by the client | 5 | 0 | 0 |

NOTE.—Where no fee is paid to counsel on a conference, no charge can be allowed to the attorney for his attendance.

- | | | | |
|--|----------------|---|---|
| 3. Expenses of the attorney incurred with the sanction of the client in collecting and taking down the evidence and defraying the expenses of witnesses, other than hereinbefore provided for, as may be allowed by the Taxing Officer. | Discretionary. | | |
| 4. Every attendance by an attorney in person, or his principal clerk, on a <i>pardah</i> woman, or on clients unable to attend Court or at the attorney's office, to obtain their signatures to the verification to complaints, statements, claims and all other proceedings, required to be verified, and to get affidavits or affirmations sworn or affirmed under commission, where within Calcutta | | | |
| Ditto ditto, where by an inferior clerk | 20 | 0 | 0 |
| 5. Every other attendance by an attorney in person, or principal clerk, at any place other than the Court house, or the attorney's office or house, at the request of the client, or otherwise where necessity shown, where within Calcutta, from Rs. 10 to | 5 | 0 | 0 |
| Ditto ditto, where by an inferior clerk | 20 | 0 | 0 |
| | 5 | 0 | 0 |

6. For every attendance beyond the local limits under either of the last two preceding clauses the like fees as in rule 91, last two clauses of item 36.

98. The attendance under items 4, 5 and 6 of rule 97 may be allowed as between party and party, or as between attorney and client, at the discretion of the Taxing Officer.

Some attendances may be allowed as between party and party.

[(Old) Bel.,
R. and O.,
p. 384.]

99. Where an attendance at any place other than the Court house or the attorney's office or house has saved a necessary attendance at the attorney's office, the fee for an attendance at the office may, at the discretion of the Taxing Officer, be allowed as between party and party, and the difference between such fee and the fee fixed by rule 97 may be allowed as between attorney and client.

Attendance allowed as between party and party.

[(Old) Bel.,
R. and O.,
p. 384.]

MORTGAGE SUITS IN WHICH THE TOTAL SUM DUE FOR PRINCIPAL DOES NOT EXCEED Rs. 1,000.

100. In suits for the sale or foreclosure of mortgaged property, in which the total sum due for principal does not exceed one thousand rupees, no fees shall be demanded or received other than those set forth in the following tables of fees, or allowed by the Court or a Judge :—

Only fees set forth in the following table to be allowed.

[Cf. C. 793.]

COSTS UP TO PRELIMINARY DECREE IN SUITS FOR SALE OR FORECLOSURE.

ATTORNEY'S FEES.

	Rs.	a.	p.
1. Letter of demand	2	0	0
2. Instructions to sue, including warrant to sue			
3. Drawing, engrossing and presenting plaint	15		
4. Attending for summons, and delivering same to the Sheriff	2	0	0
5. Attending to search whether summons served	1	0	0
6. Drawing and engrossing affidavit of service of summons	5	0	0

Two Th
and 4
hundred

[New.]

	<i>Rs. a. p.</i>
7. Attending to have same explained (where necessary)	1 0 0
8. Attending to have same sworn or affirmed	1 0 0
9. Filing same	1 0 0
10. Summons to witnesses, including instructions and all attendances for obtaining same	5 0 0
11. Service and copy on each witness, where within Calcutta	2 0 0
12. Where beyond the local limits (besides reasonable expenses incurred)	3 0 0
13. Brief to counsel	5 0 0
14. Attending at the hearing	10 0 0
15. Bill of costs (including obtaining and service of summons, and attendance on taxation)	5 0 0

COUNSEL'S FEE.

1. Brief fee on hearing	34 0 0
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OFFICER'S FEES.

(Registrar.)

1. Filing plaint, etc., and issuing summons	5 0 0
2. Filing affidavit of service	0 8 0
3. Filing application for summons to witnesses	0 8 0
4. Decree	5 0 0
5. For translations	5 0 0

(Taxing Officer.)

6. Taxation	5 0 0
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(Sheriff.)

7. Service of summons	2 0 0
8. Bailiff's charge	0 6 0

COSTS SUBSEQUENT TO PRELIMINARY DECREE IN SUITS FOR SALE.

ATTORNEY'S FEES.

[Items 1 to 18
new.]

1. Bespeaking, obtaining and filing office copy preliminary decree for the purpose of taking account	2 0 0
--	-------

	Rs.	a.	p.
2. Attending, obtaining notice of reference and service of same on the defendant, where within Calcutta	2	0	0
3. Where beyond local limits (besides reasonable expenses incurred)	3	0	0
4. Drawing and engrossing affidavit of service of notice	5	0	0
5. Attending on reference	5	0	0
(Not more than two attendances to be allowed.)			
6. Drawing and engrossing state of facts including all attendances to have the same explained, sworn or affirmed and filed	6	0	0
7. Attending, obtaining, approving and returning draft report	1	0	0
8. Bespeaking and obtaining office copy report	1	0	0
9. Attendance for service of same, where within Calcutta	2	0	0
10. Where beyond, besides reasonable expenses incurred	3	0	0
11. Drawing and engrossing affidavit of service of office copy report	5	0	0
12. Notice of application for final decree	2	0	0
13. Petition for final decree	5	0	0
14. Obtaining certificate of the Accountant-General that money not paid into Court	2	0	0
15. Affidavit of service of notice	5	0	0
16. Brief for counsel	5	0	0
17. Attendance on application	5	0	0
18. Obtaining, approving and returning draft decree	1	0	0
19. Bespeaking and obtaining office copy final decree for purpose of sale	2	0	0
20. Drawing advertisement or notification of sale	5	0	0
21. Attending Registrar therewith for approval and signature	2	0	0
22. Letters to the printer of the—, with copy of advertisement or notification, each	2	8	0
23. Drawing and engrossing conditions of sale	10	0	0
24. Preparing list of title-deeds, and delivering same to the Registrar	10	0	0
25. Attending on settlement of conditions (where required)	2	8	0

(Notice of settlement of conditions of sale will be served by the Registrar's clerk or peon, unless otherwise ordered by the Registrar.)

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
26. Attending at the sale	10	0	0
27. Obtaining office copy Registrar's certificate	2	0	0
28. Instructions and drawing petition for payment of purchase-money out of Court	5	0	0
29. Obtaining certificate of the Accountant-General	2	0	0
30. Notice of application to purchaser, or obtaining his consent	2	0	0
31. Affidavit of service of notice (where required)	5	0	0
32. Application to Court	5	0	0
33. Obtaining order	1	0	0
34. Attending and obtaining countersignature of Judge to order, and filing same with the Accountant-General	2	0	0
35. Bill of costs and attendance on taxation	5	0	0
36. Attending and identifying plaintiff to the Accountant-General	2	0	0
37. Charges for advertising not exceeding	0	0	0

NOTE.—Where for want of bidders, or other sufficient cause, it should be necessary to postpone the sale, the charge for re-advertising the sale shall not exceed the limit of Rs. 50.

38. Attending to have every necessary affidavit of service explained (where necessary), sworn or affirmed and filed	1	0	0
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COUNSEL'S FEE.

1. Fee for applying for final decree	17	0	0
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OFFICER'S FEES.

(Registrar.)

[New.] 1. Report as to amount due	5	0	0
[New.] 2. Final decree	5	0	0
3. Certificate as to result of sale	5	0	0
4. Order for payment of money into Court	5	0	0

(Taxing Officer.)

5. Taxation	5	0	0
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(Accountant-General.)

[New.] 6. Entering order and issuing money draft	5	0	0
7. Certificate that money not paid into Court	5	0	0

COSTS SUBSEQUENT TO PRELIMINARY DECREE IN SUITS FOR
FORECLOSURE.

ATTORNEY'S FEES.

	Rs.	a.	p.	
1. Bespeaking, obtaining and filing office copy preliminary decree	2	0	0	[Items 1 to 10 and 13, 14 are new.]
2. Obtaining notice of reference and service of same, where within Calcutta	2	0	0	
Where beyond local limits, besides reasonable expenses incurred	3	0	0	
3. Drawing and engrossing affidavit of service of notice	5	0	0	
4. Attending on reference	5	0	0	
NOTE.—Not more than two attendances to be allowed.				
5. State of facts	5	0	0	
6. Obtaining, approving and returning draft report	1	0	0	
7. Bespeaking and obtaining office copy report	1	0	0	
(Attendances for service of sale to be allowed as above.)				
Drawing and engrossing affidavit of service of office copy report	5	0	0	
Notice of application for final decree for foreclosure and possession	2	0	0	
10. Obtaining Accountant-General's certificate that money not paid into Court	2	0	0	
11. Application to Court for final order for foreclosure and possession	5	0	0	
12. Brief for counsel	5	0	0	
13. Tabular statement	5	0	0	
14. Application to Court for possession	5	0	0	
15. Obtaining order	1	0	0	
16. Bill of costs and attendance on taxation	5	0	0	
17. Filing original order of possession	2	0	0	
18. Obtaining, sealing and delivering duplicate order of possession to the Sheriff	2	0	0	
19. Attending to have every necessary affidavit of service explained (where necessary), sworn or affirmed and filed	1	0	0	

COUNSEL'S FEE.

1. For applying for final decree for foreclosure	17	0	0
	2	0	0

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OFFICER'S FEES.

(Registrar.)

		Rs.	a.	p.
[New.]	1. Report as to amount due	5	0	0
	2. Final decree	5	0	0
	3. Order for possession	5	0	0
	4. Duplicate copy order	5	0	0

(Accountant-General.)

[New.]	5. Certificate that money not paid into Court	5	0	0
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(Sheriff.)

6. For serving writ	4	0	0
7. Bailiff's charge	16	0	0

SPECIAL CHARGES (WHERE ALLOWED BY THE COURT) IN SUITS
 EITHER FOR SALE OR FORECLOSURE.

ATTORNEY'S FEES.

For every necessary application, before or after decree, for the appointment of guardian-ad-litem of infant defendant, or for substituted service of summons, etc.

1. Drawing and engrossing petition	5	0	0
2. Drawing affidavit (where necessary)	5	0	0
3. Attending to have the affidavit explained	1	0	0
4. Ditto ditto sworn or affirmed	1	0	0
5. Attending on application	5	0	0
6. Written statements allowed as between party and party	10	0	0

OFFICER'S FEES.

(Registrar.)

1. For filing papers	1	0	0
2. For order	5	0	0
3. Issuing summons and filing return	5	0	0

101. In such suits the following costs may be allowed as between attorney and client, but are not to be allowed as between party and party :—

	Rs.	a.	p.
1. Power of attorney (where plaintiff deposes another to receive payment)	32	0	0
2. Attending to receive payment	5	0	0

Following costs only as between attorney and client.
 [Cf. *Bel., R.*
and O., p.
347.]

3. Written statements: spontaneously tendered	Rs. a. p.
	10 0 0

(Such charge not to be allowed on taxation as between attorney and client unless it shall appear that the attorney before preparing such statements specifically informed the client of the risk incurred by him of not being allowed the costs thereof as between themselves and the other party to the suit.)

[Cf. C. 795.]

4. For every necessary attendance by an attorney in person on a <i>purdah</i> woman, or upon clients unable to attend Court or at the attorney's office	10 0 0
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5. Ditto, where by a clerk	5 0 0
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6. Beyond the local limits and within five miles, every mile	5 0 0
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102. In such suits, when defended by the mortgagor, the Court may permit the Taxing Officer to increase the fee to counsel and also to allow extra costs occasioned by the defence.

Special costs where mortgagor defends.

[New.]

[Cf. C. 794.]

103. In such suits, unless otherwise ordered, the following costs only shall be allowed as between attorney and client to the mortgagor defendant:—

Mortgagor defendant's costs.

[Cf. *Bel., R. and O.*, p. 348.]

ATTORNEY'S FEES.

	Rs. a. p.
1. Instructions to defend	5 0 0
2. Warrant	2 0 0
3. Office copy plaint	2 0 0
4. Perusing same with client, and taking instructions for brief	5 0 0
5. Writing statement, case for defence, including brief	10 0 0
6. Summons to witnesses, including instructions and all attendances for obtaining same	5 0 0
7. Service and copy on each witness, where within Calcutta	2 0 0
Where beyond the local limits (besides reasonable expenses incurred)	3 0 0
8. Attending at the hearing	10 0 0
	2 12

[New.]

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rr. 103—107.

Rs. a. p.

9. Attending on settlement of conditions of sale	5	0	0
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(Notice of settlement of conditions of sale will be served by the Registrar's clerk or peon, unless otherwise ordered by the Registrar.)

10. Attending at the sale	10	0	0
11. Bill of costs and attendance on taxation	5	0	0

COUNSEL'S FEE.

1. Brief fee on hearing	34	0	0
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OFFICER'S FEES.

1. Filing warrant	1	0	0
2. Office copy plaint	3	0	0
3. Filing application for summons	0	8	0
4. Taxation fee	4	0	0

Mortgagee
defendant's
costs.
[New.]

104. In such suits where there is a puisne mortgagee defendant, the Taxing Officer may allow as between party and party the costs set out in rule 103, and in addition thereto such of the fees under rule 100 as may be applicable.

Sales how
to be adver-
tised.
[New.]
[Cf. C. 796.]

105. In such suits for sale, the sale shall be advertised once at least in three newspapers as the Registrar may direct: Provided always that the Registrar shall be at liberty to dispense with the publication of the advertisement in any one of the above papers, wherever it may be necessary to do so for the purpose of keeping the advertising charges within the limit of fifty rupees.

SUITS FOR PARTITION OF PROPERTY NOT EXCEEDING Rs. 10,000 IN VALUE.

Estimated
value to be
stated in
plaint.
[C. 797.]

106. In every suit for partition the estimated value of the property to be divided shall be stated in the plaint.

Commis-
sion to be
issued to

107. In suits for partition in which the value of the property to be divided shall not exceed Rs. 10,000,

the commission of partition shall, unless otherwise ordered, be issued to the Registrar.

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rr. 197—198.

Registrar.

[Cf. C. 799.]

108. In such suits no fees for issuing the commission of partition, for executing it, or confirming the Commissioner's certificate, shall be demanded or received other than those set forth in the following table, or those allowed by the Court or a Judge :—

Only fees set forth in the following table to be allowed.
[Cf. C. 598.]

ATTORNEY'S FEES.

	Rs.	a.	p.
1. Attendances for obtaining commission .	10	0	0
2. Attending meeting of Commissioners, including service of notice, each .	25	0	0
(Not to exceed on the whole Rs. 100.)			
3. Instructions to confirm return .	5	0	0
4. Drawing and engrossing notice .	6	0	0
5. Copying same for service .	1	0	0
6. Service .	2	0	0
7. Affidavit of service .	6	0	0
8. Swearing same .	2	0	0
9. Obtaining certificate of return filed .	2	0	0
10. Briefing papers for counsel .	10	0	0
11. Attending counsel with brief .	2	0	0
12. Attending Court when application made .	10	0	0
13. Filing papers .	1	0	0
14. Obtaining and sealing order .	2	0	0
15. Serving same and copy .	3	0	0
16. Affidavit of service .	6	0	0
17. Swearing same .	2	0	0
18. Filing same .	1	0	0
19. Attending, getting return stamped at the Collectorate	2	0	0

COUNSEL'S FEE.

1. Application to confirm return .	17	0	0
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OFFICER'S FEES.

(Registrar.)

1. Commission of partition .	5	0	0
2. Filing return .	5	0	0

Ch. XXXVI.
rr. 108—111.

Rs. a. p.

3. Order to confirm return including all other charges	15	0	0
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(Fees of Commissioner, etc.)

1. Commissioner	160	0	0
2. Surveyor	80	0	0
3. Interpreter and clerk	40	0	0

[New.]

(N.B.—In addition to the above fees the Taxing Officer shall allow *ad valorem* duty chargeable on the return or order confirming same under the provision of the Indian Stamp Act.)

Costs at the following rates to be allowed for paper books.

[A. S. R.,
Ch. VII, r.
IX.]

109. In appeals preferred to the High Court from its Original Jurisdiction, the cost of preparing the paper-book shall be at the following rates:—

- (a) The Court charges for office copies.
- (b) Copying papers for the press, including examination, at 8 annas per folio.
- (c) Arranging papers for the press, 4 annas for each paper.
- (d) Examining and comparing papers, at 750 words per rupee.
- (e) Printing,—actual cost, at a reasonable rate to be allowed by the Taxing Officer.
- (f) Photographs and lithographing maps (where necessary),—actual cost.

Costs of paper-book to be costs in the appeal.

[A. S. R.,
Ch. VII, r.
X.]

110. The costs incurred in the preparation of the paper-book shall be costs in the appeal, unless as to the whole or any portion thereof the Court shall otherwise order.

The following fees shall be allowed to attorneys.

[A. S. R.,
Ch. VII,
r. XII.]

111. The following fees shall be allowed to attorneys in respect of appeals from the High Court in its Original Jurisdiction in addition to any fees which may be properly allowable to them under the general table of fees:—

(To the Appellant's Attorney.)

Rs. a. p.

1. Instructions to prosecute an appeal, perusing judgment and advising thereon .	25	0	0
2. Perusing papers and preparing observations for counsel, in the discretion of the Taxing Officer, from Rs. 75 to .	150	0	0

Rs. a. p.

3. Briefing necessary papers not included in the paper-book, at the ordinary rate.
4. Attendance in Court during the hearing of an appeal and when judgment is delivered, for each day not exceeding . 50 0 0

(To the Respondent's Attorney.)

1. Instructions to defend 10 0 0
2. Attendance at the office of the appellant's attorney to examine the printed copy of the transcript with the official copy, for every hour or part of an hour . . . 5 0 0
3. Perusing papers and preparing observations for counsel, at the discretion of the Taxing Officer, from Rs. 75 to . 150 0 0
4. Attendance in Court, the same as to the appellant's attorney.

112. The following fees under No. 11 of the First, and Nos. 7, 12, 14, 20 and 21 of the Second Schedule to the Court Fees Act, VII of 1870, are chargeable by the High Court in its Original Jurisdiction :—

Fees chargeable under the Court Fees Act.

[Cf. *Bel., R. and O.*, p. 391.]

SCHEDULE I.

11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Two and one-half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.

Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

SCHEDULE II.

7. Undertaking under section 49 of the Indian Divorce Act . . .	Eight annas.
12. Caveat	Five rupees.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866	Five rupees.
20. Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act and every memorandum of appeal under section 55 of the same Act	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865	Twenty rupees.

The fees abovementioned were prescribed by the amending Court Fees Act VII of 1910.

CHAPTER XXXVII.

CROWN SIDE RULES.

Constitution of Court and Sittings.

1. The Ordinary Original Criminal Jurisdiction of the Court shall be exercised by a single Judge unless the Chief Justice shall otherwise direct. Any point of law which may be reserved under the provisions of clause 25 of the Letters Patent or section 434 of the Code of Criminal Procedure, or which may be brought before the Court under the provisions of clause 26 of the Letters Patent, shall be heard and determined by a Division Court constituted by such three or more Judges as the Chief Justice shall appoint.

Jurisdiction to be exercised by a single Judge. Point reserved to be disposed of by three or more Judges. [B. 767.]

2. Applications for the exercise of the Extraordinary Original Criminal Jurisdiction conferred on this Court by clauses 24 and 29 of the Letters Patent, and application under section 526 of the Code of Criminal Procedure, shall be heard and disposed of at the Appellate Side. But cases directed to be tried by the High Court will be tried at the Crown Side according to the provisions of the Code of Criminal Procedure before such Judge as the Chief Justice shall appoint.

Appellate Side to hear applications O. C. J. cases transferred to be heard on Crown Side. [B. 568.]

3. The Criminal Sessions shall commence on such dates and be held at such intervals in each year as the Chief Justice may from time to time appoint and the Court shall sit daily (Sundays and close holidays excepted) unless the Presiding Judge otherwise directs until the jails are delivered.

Commencement and sittings of Sessions. [Cf. B. 769.]

See clause 37 of the Charter, *ante*, p. 46, and note thereto.

Summonses and Processes.

4. All summonses, precepts, rules, orders and mandatory process shall be issued from and returned into the office of the Clerk of the Crown, and shall be subscribed by him and tested, sealed and executed in the same manner as the like processes are on the Civil Original Side.

Clerk of the Crown to issue summonses and processes. [B. 771.]

Witness
residing
beyond
certain
limits not to
be summoned.
[B. 772.]

5. No summons shall be issued by the Clerk of the Crown to compel the attendance as a witness of any person resident and at the time residing at a greater distance than ten miles from the Court House unless the Court or a Judge order the same.

Attendance
of witnesses
under
recognizances
and beyond
jurisdiction.
[B. 773.]

6. In cases where witnesses resident beyond the local limits of the Ordinary Original Criminal Jurisdiction of the High Court have been bound over by recognizances or summoned to attend and give evidence at the trial of any person committed by any Magistrate in the Mofussil to any Criminal Sessions of the High Court, it shall not be necessary for the Clerk of the Crown to issue any summons to such witnesses, but the Clerk of the Crown shall in all such cases, in sufficient time before the day appointed for holding the Criminal Sessions, send a letter to the Magistrate of the district from which the committal was made, stating the day on which the Criminal Sessions are to be held, with a list of the witnesses from whom recognizances have been taken and of those to whom summonses have been issued, and requesting the Magistrate to cause the witnesses to be served with notice to attend on the day named in sufficient time to ensure their attendance on that day.

For Rules as to the expenses of complainants or witnesses coming from the Mofussil, see Appendix Q, *post*, p. 647.

THE JURY RULES.

See notes to clauses 25, 26 and 86 of the Letters Patent (1865), *ante*; also clauses 13 and 14 of 24 and 25 Vict., c. 104, *ante*.

[See C. 707 to
728.]

From a note supplied by Mr. Bonnaud, the Clerk of the Crown, it appears that the amended Jury rules of 1907, having been found impracticable, the old procedure, with certain modifications was, with the permission of the Judges, re-adopted.

Those rules have therefore been drawn in accordance with present practice.

Qualifications
of Jurors.

7. Every male person between the ages of twenty-one and sixty, who is not the subject of any Foreign State, and who resides or personally works for gain within the local limits of the High Court in its Ordinary Original Criminal Jurisdiction, shall be qualified and liable, subject to the provisos and conditions hereinafter contained, to serve as a Juror at any

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[rr. 7—10.]

Criminal Sittings of the High Court, other than sittings held under the provisions of section 335 of the Code of Criminal Procedure, and upon any inquest before the Coroner of Calcutta; provided he be the resident occupier of a house within the said local limits of the annual value of not less than four hundred rupees; or has property, or an interest in lands, tenements, or goods within the Provinces of Bengal, of Bihar and Orissa, or of Assam, of the value of not less than three thousand rupees; or is in receipt of an income of not less than one hundred rupees a month. [Altered.]

America is not “a Foreign State” within the meaning of this Chapter.

“Annual value” in this rule means annual value as defined by section 151 of the Calcutta Municipal Act, 1899.

Subject of any Foreign State.—See note to clause 19 of the Charter, ante, p. 33.

8. No person shall be eligible to serve as a Juror, as aforesaid, who holds any office in or under the High Court; or who receives any pay or emolument for any employment in any office or under any officer thereof; or for executing any duties of Police; or who is the subject of any Foreign State; or who is under the age of twenty-one years; or who having been convicted of a non-bailable offence under the Indian Penal Code, or of a similar offence in British India or elsewhere, shall not have obtained a free pardon in respect thereof, or have obtained a reversal of such conviction upon the merits; or who is a lunatic or an idiot; or who does not understand English when spoken. Disqualification of Jurors.

9. The persons exempted from liability to serve on Juries are enumerated in a list kept by the Clerk of the Crown for that purpose and they shall not be put upon the list of Jurors. Persons exempted from serving on Juries.

Exemptions.—An application for exemption from liability to serve on the jury should be by letter to the Registrar which is submitted to the Full Court, see e.g., case of Mr. T. W. Fish, letter No. 732, dated 13th July 1907.

For a case where the Government asked that officers be exempted, see letter No. 550, dated 10th May 1906, and the letter of 10th May 1876, there referred to.

10. Subject to the foregoing rules and to the right of objection contained in section 278 of the Code of Persons whose names are on the

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rr. 10—11.

Jury List
liable to
serve subject
to objection

[*Altered.*]

List of
Special and
Common
Jurors to be
summoned
for each
Session, when
and by whom
to be pre-
pared, and
number of
names to be
contained
therein.

[*Altered.*]

Criminal Procedure, any person whose name shall be on the Jury List then in force shall be qualified and liable to serve as a Juror as aforesaid.

11. On some day not less than six weeks before the commencement of each Session, one of the Judges of the High Court shall cause to be made out lists of the persons to be summoned as Special and Common Jurors, respectively, for such Session. The list of Special Jurors shall contain the names of forty and the list of Common Jurors the names of eighty persons of those respectively included in the list of Special and Common Jurors. The list shall be respectively called 'The Special Jurors' List' and 'The Common Jurors' List' for the particular Session, designating it by the date on which it is to commence, and shall be prepared as follows :—

List of
Special Jurors
how prepared.

[*Altered.*]

List of
Common
Jurors how
prepared.

(1) The names of all persons, if any, ordered to be entered in the list of Special Jurors for such Session under rule 12, 15 or 20 shall be first entered in the said list, unless the Judge shall be satisfied as regards any one or more of such persons that he or they will be unable, from illness or other sufficient cause, to attend at such Session, in which case the name of such person may be set aside in the same manner as it might have been set aside under rule 12, if the name had been drawn by lot for such Session. The Judge shall then cause to be drawn by lot the names of such a number of persons qualified and liable to serve on Special Juries as, with those already on the list, will, subject to the provisions of these rules, make up the number of forty persons qualified and liable to serve on Special Juries, and the names of such forty persons shall be entered upon and form the list of Special Jurors liable to serve and to be summoned as Special Jurors for such Session.

(2) In like manner the names of all persons, if any, ordered to be entered in the Common Jurors' List for such Session under rule 12, 15 or 20, shall be first entered in the said list, unless the Judge shall be satisfied as regards any of them that such person will be unable, from illness or other sufficient cause, to attend at such Session, in which case the name of such person may be set aside in the same manner as it might have

been set aside under rule 12, if his name had been drawn by lot for that Session. The Judge shall then cause to be drawn by lot the names of such a number of persons qualified and liable to serve on Common Juries as, with the names already on the list, will, subject to the provisions of these rules, make up the number of eighty persons qualified and liable to serve on Common Juries, and the names of such eighty persons shall be entered upon and form the list of Common Jurors liable to serve and to be summoned as Common Jurors for such Session. *[Altered.]*

12. The mode of proceedings to draw the names of such Special and Common Jurors, respectively, shall be as follows :—

The names of all the Jurors in the list of Special and Common Jurors, respectively, prepared by the Clerk of the Crown, shall be numbered consecutively. The number attached in the list of Special Jurors to the name of each Juror liable to be summoned as a Special Juror for the Session for which the list of Special Jurors is to be prepared, shall be written on a bone or ivory counter, the several counters being all, as nearly as may be, of equal size and shape, and such counters shall be put together by the Clerk of the Crown into a box, and on the day to be fixed for drawing the names of the Jurors, the Clerk of the Crown shall, in open Court, draw, or cause to be drawn, the said counters one after the other, until the requisite number of Special Jurors shall be obtained. The Juror on the Special Jurors' List, whose number on such list shall correspond with the number drawn, shall, subject to the provision in these rules, be entered in the Special Jurors' List for the Session, and a number denoting the order in which the name of each Juror is so drawn shall be set against the name of such Juror in the Special Jury List for the Session.

Mode of proceedings to draw the names of the Special and Common Jurors to be summoned.

A similar course, *mutatis mutandis*, shall be adopted in drawing the names of the Common Jurors.

The Judge may order the name of any person who has actually served as a Juror in the preceding year and of any person known, or believed to be dead, absent from Calcutta, or likely to be unable from illness or otherwise to attend, or known, or believed not to be

Names of deceased persons or persons not liable to serve or excused from service

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to be set aside.
Names of persons excused from service to be entered in list for future service.

Order in which names to be arranged in lists with additions and place of abode.

Copy of lists to be annexed to precept to Sheriff to summon Special and Common Jurors in numerical order.

[*Altered.*]

Name of Juror excused attending at one Session, on condition of his serving at a subsequent Session, to be inserted in the list for such Session.

[*Altered.*]

qualified or liable to serve as a Juror under this rule, to be set aside; and, in every such case, an additional name shall be drawn in lieu of that so set aside, and the Judge, where he thinks fit, may order the name of any person so set aside, except on account of death or disqualification, to be entered on the list of Special and Common Jurors, as the case may be, for any subsequent Session to be then fixed.

13. The names and places of abode of the several persons included in such Special and Common Jurors' Lists for the Session shall be written therein and numbered in the order in which they shall have been drawn, and such lists shall be signed by the Judge.

14. A copy of such lists shall be annexed to a precept to the Sheriff, commanding him to summon the first thirty-five on the list of Special Jurors, and the first sixty-five on the list of Common Jurors, and in case he shall not be able to summon the whole of the first thirty-five or sixty-five, as the case may be, then to summon as many as shall be necessary to make up the full number of thirty-five or sixty-five of those in numerical order in such lists respectively next after the first thirty-five or sixty-five. Special Jurors may be required to attend on the dates notified to them by advertisement published in any public newspaper.

15. Any person whose name is included in the Special or Common Jurors' List for any Session may apply to the Clerk of the Crown to cause him to be excused from attendance as a Juror, either generally or at the particular Session. Such application shall be made at least one week before the day fixed for the commencement of the Session, and shall specify the grounds upon which the application is made. The Clerk of the Crown shall, as soon as possible after the last day allowed for making such application, bring them before one of the Judges of the Court, and such Judge shall pass orders thereupon, which shall be communicated by the Clerk of the Crown to the respective applicants. If the Judge shall think fit to excuse any of the applicants from attendance at the particular Session, he may do so unconditionally, or on condition of his serving at the next or some subsequent Session to be fixed, and any such conditional order shall operate

as an authority to the Clerk of the Crown to include the name of such person in the list of such subsequent Session under the provisions of rule 10.

16. Every person named in the lists mentioned in rule 13 shall forthwith, or as soon as possible after the receipt of the precept by the Sheriff, be summoned by him to attend at the Session for which he shall have been appointed to serve as a Juror, and such summons shall be served at least ten days before the first day of the Sessions. Jurors to be summoned three days before the first day of the Session. [Altered.]

17. A summons to a Juror who resides out of the limits of the town of Calcutta, and to whom access at his office or place of business within such limits is denied to the Sheriff's Officer, as also all notices, orders, or other proceedings required to be served on him, shall, unless otherwise ordered, be addressed to him at his office or place of business aforesaid, or at his place of residence, and forwarded to him by post duly registered. The transmission by post as aforesaid of every such summons, or notice or of a copy, authenticated by the seal of the Court, of every such order or other proceeding, shall, unless good cause be shown to the contrary, be deemed sufficient service thereof. Service of summons or process by post.

18. In all other cases every such summons, notice, order, or other proceeding shall, unless otherwise ordered, be served on a Juror personally. Personally.

19. The Sheriff shall, as soon as possible after service of the summons, and not later than one week before the commencement of the Session, return the precept to the Clerk of the Crown, with two panels annexed thereto, one of the Special Jurors and one of the Common Jurors, which panels shall show in a tabular form the names of the persons summoned and the particulars of service upon each; and if any person or persons named in the lists annexed to the precept shall not have been served, the panel shall state that fact, and the reason why such person or persons has or have not been summoned, and in every case the reason why such service has not been effected shall be verified by the affidavit of the Officer whose duty it was to effect such service, and such affidavit shall be filed with the Clerk of the Crown, with the return to the precept. Sheriff to return precept with two panels, one of Special Jurors, the other of Common Jurors, showing in tabular form names and particulars of service and accounting for non-service. [Altered.]

XXVII.

20-22.

Sheriff's
return to be
immediately
laid before
a Judge for
orders.

20. On the receipt of such return the Clerk of the Crown shall, without delay, bring the same before one of the Judges of the Court. The said Judge may, if necessary, examine the Sheriff's Officer or Officers as to the truth of such return, and as to the circumstances of the service or of the absence of service on any person, and may direct service to be made upon the person or persons not already served in such manner as to him shall seem fit. The Judge, if he think fit, may cause the name of any person returned by the Sheriff as not summoned to be entered on the lists of Jurors, either Special or Common, as the case may be, for any subsequent Session to be fixed by the Judge.

If sufficient
number of
Jurors not
served,
further
name of
Jurors to be
drawn by
lot, as
provided by
rule 12.

[*Altered.*]

21. Where the Judge shall be of opinion that the number of Jurors named in either of the said lists who shall have been served is not likely to be sufficient, he may cause to be drawn by lot, in the mode provided by rule 12, such further number of names as may be requisite not exceeding forty and eighty respectively.

Copy of
Supplement-
ary Lists to
be annexed
to additional
precept to
Sheriff.
Sheriff's
return.

[*Altered.*]

22. Such lists shall be called the Supplemental Lists of Special or Common Jurors, as the case may be, and shall be prepared and signed in the manner hereinbefore provided with respect to the original lists, and copies thereof shall be sent to the Sheriff with an additional precept, and the Sheriff shall, as soon as possible after the receipt of such additional precept, cause the persons named therein to be summoned to attend at the Session, and shall return the precept to the Court not later than one clear day before the first day of the Sessions, with a panel similar to that provided by rule 19 in respect of the original lists and precept.

Jury how to
be drawn
and
empanelled.

23. In order to nominate a Jury for the trial of any prisoner or other person to be tried by Jury, the Clerk of the Crown shall cause to be put together into one box cards or pieces of parchment containing the names of all the persons summoned to serve on the Common Jury for the Session, where the trial is to take place before a Common Jury, or on the Special Jury, where the trial is to take place before a Special Jury, except such of the said persons as shall have been excused by the Judge

from serving on that day in consequence of his having served as a Juror on the previous day, or for any other cause. Such cards or pieces of parchment shall be, as nearly as may be, of equal size, and each shall bear the name of one person summoned to serve on the Jury for that Session. The Clerk of the Crown shall then in open Court draw or cause to be drawn out of the said box nine of the said cards or pieces of parchment, one after another; and where any of the Jurors whose name shall be so drawn shall not appear, then such further number shall be drawn till nine Jurors shall appear. The prisoner or person to be tried shall be informed that, where he desires to object to any Juror, he must make his objection before the Juror is shown. The names of the Jurors shall then be called aloud; and where, upon any challenge or objection on behalf of either the Crown or the party to be tried, or for any other lawful cause, any Juror is not allowed to serve, or is exempted from serving, the Clerk of the Crown shall draw out another card or piece of parchment from the said box, and so on, until nine Jurors shall have been drawn who shall be allowed to serve.

24. Where, by reason of absence, or disallowance on challenge, or any other cause, there is a deficiency of Jurors, the Court may command the Sheriff or other officer, to name or summon a sufficient number of persons to make up a full Jury, and the Sheriff, or other Officer shall, at such command of the Court, return such men duly qualified to serve as shall be then present, or can be found to serve on such Jury, and the course of proceeding shall be the same as if their names had been returned in the panel and drawn by ballot under rule 23; provided that, in case of a Special Jury, the additional Jurors may be taken from the list of Common Jurors summoned to serve at the same Session if a sufficient number of Jurors qualified to serve as Special Jurors shall not be present in Court.

Proceedings
in case of
deficient
Jurors.

25. After each Session the Clerk of the Crown shall make an entry in the List of Jurors opposite the names of those who shall have served at such Session or shall have been summoned to serve at such Session and shall not have made default, together with the date of service, or of the Session for which he shall have been summoned to serve.

After every
Session
entry to be
made
against the
name of each
non-default-
ing Juror.

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**Exemption
of persons
who have
already
served as
jurors.**

26. On the conclusion of any trial whether tried by a Special or Common Jury, the Presiding Judge may direct that the persons who have served as Jurors at such trial shall be exempted from service as Jurors for a period of not more than two years, and the names of the persons so exempted shall not be entered on the Lists of Special and Common Juries for any Sessions during such period, unless Juries for the trial of cases committed to the Sessions during such period cannot be made up without them.

**Only persons
on Common
Jury List
eligible to
serve on
Coroner's
inquest, and,
except in
case of
necessity, no
Juror to be
summoned
again within
twelve
months.**

27. No person shall be summoned to serve upon any inquest before a Coroner unless he is on the Common Jury List, nor, except in the case of necessity, within the period of twelve months after he shall have served on a Coroner's inquest or shall have been summoned to serve on a Coroner's inquest, and shall not have made default. The Coroner shall keep a copy of the Common Jury List, and shall enter therein the names of the persons who shall have served or been summoned to serve and not made default, and the date of the inquest at which such Juror shall have served or for which he shall have been summoned to serve.

Bail.

**Application
for bail of
prisoner
committed
to Sessions.
[B. 796.]**

28. Where a person has been committed for trial to the Sessions, application may be made on his behalf that he may be bailed on giving 48 hours' written notice to the prosecutor or his attorney. Such notice shall contain the names, residences and descriptions of the persons whom he proposes as his sureties. The application shall be supported by an affidavit stating when, by whom, for what offence, and under what circumstances the person was committed and where he is detained in custody and the grounds for the application. A copy of such affidavit shall be served upon the prosecutor or his attorney with the said notice. The prosecutor may file affidavit in opposition to the application and may appear to oppose the making of an order that the prisoner be admitted to bail.

**Clerk of the
Crown to
write to
Magistrate
to produce**

29. On the hearing of such application the Court may direct the Clerk of the Crown to write a letter directing the Magistrate by whom such person has been committed to produce the depositions taken

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 rr. 28—33.
 depositions.
 [B. 797.]

before him in the case unless such depositions shall have previously been forwarded to the office of the Clerk of the Crown.

30. The application mentioned in rule 28 may be made on any shorter notice than 48 hours where the prosecutor or his attorney consents thereto or waives his right to 48 hours' notice, but in every case the written notice and affidavit mentioned in the said rule must be served on the prosecutor or his attorney before the application is made.

On prosecu-
 tor consent-
 ing, order on
 shorter
 notice.
 [B. 798.]

31. Where the order is that the person shall be admitted to bail, the Court shall direct to what amount such bail shall be taken and with how many sureties, and unless the Court approve of the names proposed as bail or shall otherwise direct, the Registrar shall after examination approve the same if he is satisfied of their sufficiency. The order shall be drawn up with a direction that a warrant be issued to bring up the person before the Court for the purpose of being bailed (Form No. 1).

Amount of
 bail and
 number of
 sureties by
 whom
 approved.
 [Cf. B. 799.]

32. Unless the Court shall otherwise order the recognizances shall be entered into before the Registrar. On the person being brought up under the warrant issued, the Registrar may, on recognizances being entered into according to the Court's order, direct that he be released.

Person may
 be released or
 entering re-
 cognizances.
 [Cf. B. 800.]

33. The form to which reference is made in this Chapter is in Appendix N.⁽¹⁾

Form.
 [New.]

(¹) *Post*, p. 537.

CHAPTER XXXVIII.

MISCELLANEOUS MATTERS.

Applications under section 491 of the Code of Criminal Procedure.

Applications
under
section 491,
Criminal
Procedure
Code.

[*Cf. B. 791.*]

[*Cf. C. 696,*
last para., and
697 & 698.]

1. Applications for orders under clauses (a), (b), (c), (e) and (f) of section 491 of the Criminal Procedure Code shall be made on petition duly verified by affidavit setting forth the circumstances under which the order is sought.

Section 491 of the Criminal Procedure Code.

Application for custody of Children.—See *In the matter of Saithri* (1891), I. L. R. 16 Bom. 307; and *In the matter of Joshy Assam* (1895), I. L. R. 23 Cal. 290.

Persons arrested and sent to jail.—See *Alter Kaufman v. The Government* (1894), I. L. R. 18 Bom. 636; in the matter of *Horace Lyall* (1902), I. L. R. 29 Cal. 286. See also in matter of *Jogesh Chunder Bose*, application made to the Chief Justice, 31st May 1911.

Person extradited under the Indian Extradition Act XV of 1903.—See *In the matter of Rudolph Stallman* (1911), I. L. R. 39 Cal. 164.

Application
for order
under clause
(c).

[*New.*]

2. Where the application is for an order under clause (c) it shall be stated where the prisoner is detained and for what purpose his evidence is required.

Procedure
where order
under
clause (d)
is required.

[*Cf. C. 699.*]

3. Where an order under clause (d) is required the presiding officer of the Court-martial or the presiding officer acting under the Commissioner from the Governor-General in Council may send an application to this Court in writing and in such case an affidavit shall not be required. The application shall be in the form of a letter addressed to the Registrar, stating the purpose for which the said Court-martial has been assembled or the authority under which the said Commissioners are acting, and also stating where the prisoner is detained in custody, and when, where, and for what purpose he is required to be produced. It shall be the duty of the Registrar to submit the letter as soon as possible after the receipt thereof, to, and to obtain the order thereon of the Judge of this Court exercising Ordinary Original Jurisdiction.

Notice of
application
under

4. Where the application is for an order under clause (e), notice of the application shall be served on

the prisoner and it shall be stated in the affidavit where the prisoner is detained in custody, to what other custody it is proposed to remove him and the reason for such change of custody. clause (e).
 [C. C. 700.]

5. Where the application is for an order under clause (f), the Sheriff's return of *cepi corpus* to the warrant of arrest shall be produced. The officer having the custody of the Sheriff's return shall cause the same to be produced before the Court on a requisition to him in writing. Application for order under clause (f).
 [C. C. 701.]

6. Where a person shall be in custody in any case ordered to be transferred to this Court from any Criminal Court situate within the local limits of its Ordinary Original Criminal Jurisdiction, the order for the transfer of the case shall be drawn up with a direction that a warrant be issued to bring up the person so in custody to be dealt with according to law. In any case ordered to be transferred to this Court, warrant to bring up the person in custody.
 [C. 696 (first portion).]

7. In any case in which the Court shall order a person in custody to be brought either before it, or before a Court-martial, or before Commissioners acting under the authority of a commission from the Governor-General in Council, or to be removed from one custody to another, a warrant shall be prepared and signed by the Registrar or the Clerk of the Crown and countersigned by the Judge, who made the order and sealed with the seal of the Court. Warrant to be countersigned by a Judge and sealed.
 [C. 704.]

8. Such warrant where issued under rule 3 shall be forwarded by the Registrar or Clerk of the Crown, to the officer in charge of the jail in which the prisoner is confined. In every other case, the warrant shall, unless otherwise ordered, be delivered to the attorney of the applicant, who shall cause it to be served personally upon the person to whom it is directed, or otherwise, as the Court shall direct. Warrant to whom to be forwarded or delivered.
 [C. 706.]

9. Where the application is to bring up before the Court a person in custody under a warrant to detain such person, a copy of the warrant under which he is detained, obtained from and authenticated by the signature of the person in whose custody the applicant is, shall be produced to the Court, or it shall be shown by affidavit that it has been asked for and denied. Applications to be supported by a copy of the detaining warrant, or an affidavit of its having been refused.
 [C. 702.]

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rr. 10—16.

Rule nisi on
prima facie
case.

[B. 793.]

10. Where the Court is of opinion that a *prima facie* case for granting the application is made out a rule nisi may be issued calling upon the person or persons against whom the order is sought to appear on a day to be named therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

Order on
hearing of
rule.

[B. 794.]

11. On the return day of such rule or on any day to which the hearing thereof may be adjourned, where no cause is shown, or where cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty or delivered to the person entitled to their custody. Where cause is allowed the rule shall be discharged.

Costs of rule
in discretion
of Court.

[B. 795.]

12. In disposing of any such rule the Court may in its discretion make an order for the payment by one side or the other of the costs of the rule.

Forms
of warrant.
[C. 706.]

13. The forms of warrant (Nos. 2 to 6) in Appendix N shall be followed.(')

Appeals against orders under section 491, clauses (a) and (b), of the Code of Criminal Procedure.

Appeal to be
heard by
Appellate
Court taking
appeals from
Original Side

[B. 801.]

14. The appeals shall be heard and determined by the Division Court established on the Original Side for the purpose of hearing appeals.

Memoran-
dum of
appeal.

[B. 802.]

15. The memorandum of appeal shall follow as nearly as may be the form prescribed for memoranda of appeals on the Original Civil Side, and rule 2 of Chapter XXXII shall *mutatis mutandis* and as far as applicable apply to a memorandum of appeal under these rules.

Copy of
order to
accompany.

[B. 803.]

16. The memorandum shall be accompanied by a copy of the order appealed against.

(') *Post*, pp. 538 to 541.

17. With the memorandum of appeal the appellant shall (unless he appears in person or the Court otherwise orders) deposit in Court the sum of Rs. 200 as security for the costs of the appeal, and the Accountant-General shall give a certificate of such deposit having been made.

Security for
cost of
appeal.
[B. 804.]

18. The Registrar is empowered to accept and file a memorandum of appeal where rules 14 to 16 have been complied with and such of the following conditions as apply to the case have been fulfilled, namely :—

On compli-
ance with
rules 14 to 16
appeal to be
filed.
[B. 805.]

(a) That the appellant has within twenty days after the date of the judgment being pronounced applied to the Registrar for a copy of the order, and (if no application has been made to draw up the same) to have the original drawn up.

(b) That the appellant has presented the memorandum of appeal within the time allowed by the Limitation Act.

19. An application for the admission of a memorandum of appeal rejected by the Registrar shall be made to the Appellate Court at the earliest opportunity and on at least two days' notice to the respondent.

Application
for admission
of rejected
appeal.
[B. 806.]

An application by a respondent to take off the file a memorandum of appeal admitted by the Registrar shall be made in like time and manner.

20. An application under rule 19 shall be on affidavit setting forth the grounds on which the applicant relies, and a copy of such affidavit shall be served on the respondent or appellant as the case may be, along with the notice, and the notice, the affidavit, and any further affidavit in reply or otherwise shall be filed in the Crown Office not later than the day before the hearing.

Application
under rule 19
to be on
affidavit.
[B. 807.]

21. The appellant shall at the time of filing his memorandum of appeal apply to the Registrar for a copy of affidavits or other necessary documents, including a copy of the depositions where witnesses have been examined, and shall prepare the paper-book without delay.

Paper-book
to be pre-
pared by
appellant.
[Cf. B. 808.]

22. At least two days before the day fixed for the hearing of the appeal a copy of the paper-book for

Paper-book
when to be
filed.

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[Cf. B. 809.]

Contents of
paper-book.

[B. 810.]

each of the Judges sitting in appeal shall be delivered to the Registrar.

23. The paper-book shall contain copies of the following proceedings :—

The memorandum of appeal.

The order.

The judgment (where written).

The petition and all affidavits (with exhibits) filed in support or in opposition thereto.

The depositions of witnesses (if any).

Such other papers as shall be relevant and necessary for purposes of the appeal and shall be properly paged and indexed.

Order as to
costs of
appeal.

[B. 811.]

24. When disposing of the appeal the Court may make such order as to the costs of the appeal and original motion as it thinks fit.

Rules under section 21 of the Indian Press Act, I of 1910.*

Rules
applicable to
applications
under the
Act.

25. These rules shall apply to all applications made to, and all proceedings taken in, the High Court of Judicature at Fort William in Bengal under the Act.

The only case which, so far, has come to a hearing under these rules is in the matter of a pamphlet entitled "Come over into Macedonia and help us." 18 C. W. N. [1913-14] p. 1.

Procedure for
applications
under the
Act.

26. Every application to the High Court, under section 17 of the Act, to set aside an order of forfeiture under sections 4, 6, 9, 11, or 12 shall be made by the presentation of a petition which shall be signed by the applicant and verified at foot by the affidavit of the applicant.

Petitions
under the
Act how to
be prepared.

27. The petition shall be written in the English language on foolscap paper or other paper similar to it in size and quality, bookwise, and divided into paragraphs numbered consecutively. Dates and sums occurring in the petition shall be expressed in figures.

Title of
petitions.

28. The petition shall be headed—

"In the High Court of Judicature at Fort William in Bengal, Original Jurisdiction."

"In its Special Bench constituted under Act I of 1910."

* These rules are as passed in March 1910.

and shall be intituled “ in the matter of the (name if any) Printing Press or the (name or description) book, document or newspaper, as the case may be.

29. The petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture has been made and all documents or copies thereof in proof of such interest together with a copy of the notice of forfeiture under sections 4, 6, 9, 11 or 12 of the Act as the case may be, shall be annexed as exhibits to the petition.

Interest of
applicant
to be stated.

30. The petition shall state the ground or grounds on which it is sought to set aside the order of forfeiture.

Petition to
state
grounds.

31. All vernacular documents annexed as exhibits to the petition and all vernacular documents relied on by the applicant and intended to be tendered in evidence shall be translated into English by a competent and duly qualified translator or translators so that no question may arise as to the accuracy of the translations or the admissibility in evidence of the documents and the translations annexed to them by reason of defects in such translations.

Exhibits
shall be
translated
into English.

32. The petition with exhibits annexed thereto and their translations, if any, together with a copy of such petition and exhibits with translations, shall be presented to the Chief Justice who will constitute a Special Bench and appoint a day for the hearing and determination of the application.

Petition to be
presented to
the Chief
Justice.
Constitution
of Bench

33. Notice in writing of the day appointed for the hearing and determination of the application shall be given by the Registrar to the Chief Secretary to the Government of Bengal, and the copy of the petition and exhibits with translations, if any, in the last preceding rule mentioned shall accompany such notice.

Notice of
hearing and
copy to Chief
Secretary,
Bengal
Government.

34. Printed paper-books containing the petition and all exhibits annexed thereto with translations shall be prepared in the manner prescribed by the rules for the preparation of paper-books in appeals from the High Court, Original Jurisdiction, and shall be delivered to the Registrar by the applicant at least one week before the day fixed for the hearing and determination of the application.

Paper-books
shall be
printed, etc.,
as in appeals.

35. There shall be ordinarily printed 30 copies of the paper-book, but the Registrar may, where necessary, direct a larger number to be printed.

Number of
paper-books.

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Table of fees.

36. The table of fees now in force in this Court in its Original Civil Jurisdiction shall be applicable to applications under the Act and proceedings thereon and costs payable in respect of such applications and proceedings shall be taxed, where so directed, by the Taxing Officer.

Execution of orders.

37. The provisions of the Code and the Rules and Orders of this Court relating to execution of decrees and orders shall be applicable to the execution of orders passed by the High Court on applications under the Act.

Evidence by Commission Acts, 1859 and 1885.

Certain provisions of the Code applicable. [C. 271.]

38. The provisions of the Code relating to the summoning, attendance and examination of witnesses, shall apply in the case of persons required to give evidence or produce documents under the Acts (22 Vict., c. 20, and 48 and 49 Vict., c. 74).

See note on p. 460 *Belchambers' Practice*. For a case where a Letter of Request came from England and was executed by this Court, see letter No. 1157, dated 11th December 1908 and No. 1321, dated 20th December 1906.

See also 19 & 20 Vict., c. 113, which provides for the taking of evidence in Her Majesty's dominions, in relation to civil and commercial matters pending before Foreign Tribunals, and by which any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any Judge of such Court, may order the examination of witnesses, and command their attendance, etc. Under this Statute, in a case where a commission was issued by a District Court in America, to the Consul-General of the United States, upon the application of the plaintiffs, supported by an affidavit of the Consul-General, that the suit was in respect of a commercial matter, and that the Court in which it was pending had jurisdiction, an order was made for the attendance of witnesses before the Consul-General for the purpose of being examined under the commission (*Rall and others v. Howard and others*, 25th August 1888. See also *Gacvan & Co. v. Schroeder Smidt & Co.*, 25th February 1884, cited on p. 653, *Belchambers' Practice*).

Provisions as to costs and remuneration. [C. 272.]

39. The provisions of the Code, and, so far as they are applicable, the rules and tables of fees and circular orders of this Court now in force, or which may hereafter from time to time be in force, relating to the costs of or incidental to the examination of witnesses, including the remuneration of the examiner, shall apply to cases where persons are required under the Acts to give evidence or produce documents within the local limits of the jurisdiction of this Court or beyond such limits and within its general jurisdiction.

Rules under section 4, clause (c), of the Powers of Attorney Act, VII of 1882.

40. The Registrar shall have the custody of all instruments deposited in this Court under section 4, clause (a), of the Act.

Registrar to have custody of instruments under Act VII of 1882.

[C. 647.]

41. A register of all such documents shall be kept under the following headings :—

Register to be kept.

[C. 648.]

1. Description of document.
2. Date.
3. By whom deposited.
4. When deposited.

The following fees shall be taken by means of Court-fee stamps under section 4, clauses (a), (b), (c) :—

For filing and registering every power, and filing every other document, Rs. 2.

For a certified copy :—

Where the copy is presented by the party, at 2 annas per folio.

Where the copy is prepared in the Registrar's office, at 4 annas a folio.

For searching and inspecting each set of documents, 8 annas.

Petitions and Orders under the Official Trustees Act, XVII of 1864.

42. Every petition presented to the Court for the appointment of the Official Trustee under the Act shall be accompanied by the original or a copy of the deed or other instrument creating the trust, and shall set forth—

Petitions to be accompanied by trust deed.

[Cf. C. 507.]

- (a) the particulars as fully as may be possible of the trust fund, specifying in detail the Government securities and other property appertaining thereto;
- (b) a history of the trust;
- (c) the names and addresses of the persons to whom the income of the trust is then pay-

Particulars to be given in the petition.

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17.

able, and how such income has become payable to them respectively;

- (d) the dates on which the income or any and what portion of it has usually been paid, and particularly the date and the amount of the last payment;
- (e) the names of the tenants of any immoveable property appertaining to the trust and the particulars of their leases; and
- (f) where the property, or any part thereof, consists of houses, the date and cost of the last general repairs and the name of the person by whom such cost was defrayed.

Deeds,
documents
and papers
relating to
trust
property to
be deposited
in Court,
or a list
given.
[Cf. C. 508.]

43. With every such petition, the petitioner shall deposit in Court for delivery to the Official Trustee all deeds, instruments, documents and papers in his possession or custody, or under his control, relating to the trust property and its administration; and as to such as are not in his possession, custody or control, which may be necessary to enable the Official Trustee to administer the trust, the petitioner shall at the same time deposit a list containing such particulars and information as will enable the Official Trustee to obtain possession of the deeds, instruments, documents and papers specified in such list or copies thereof.

Consent of
Official
Trustee to
be certified
at foot or on
copy of
petition.
509.]

44. Upon any petition for the appointment of the Official Trustee under section 8 or 10 of the Act, the consent of the Official Trustee to such appointment shall be certified under his hand at the foot of the petition or of a copy thereof.

Petition to
be served on
Official
Trustee,
and with his
certificate,
to be pro-
duced in
Court to the
Registrar.
[C. 510.]

45. Every petition for the appointment of the Official Trustee under section 32 of the Act shall, four clear days before the same is presented to the Court, be served upon the Official Trustee, who shall certify, under his hand at the foot of such petition, whether he does or does not consent to the prayer thereof, giving the reason for his refusal, where he declines to consent. The Official Trustee shall cause the copy of the petition, so certified, to be produced in Court, or transmitted to the Registrar, at the expiration of four days from the date of the service of the same upon him.

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rr. 46—48.

46. In making any order under section 32 of the Act for the transfer of any trust property, belonging to any lunatic or infant, to the Official Trustee, or on petition with respect to any trust property vested in the Official Trustee, the Court may order that any securities which may appear to the Court not to be safe and proper securities for the investment of the property of infants or lunatics, shall be sold, or the value thereof otherwise realised, and the proceeds invested in Government securities.

Securities may be ordered to be sold, and proceeds re-invested.

[C. 511.]

47. An order appointing the Official Trustee under the Act may direct the Official Trustee to pay the costs of the application and his own commission out of the principal or income of the trust funds. Where the trust property shall consist only of immoveable property, the order shall direct such costs and commission to be paid out of the income of the same.

Costs of application.

[C. 512.]

Rules under section 20 of the Official Trustees Act, XVII of 1864.

Duties of the Official Trustee.

48. The Official Trustee shall keep the following accounts and statements —

Accounts

[C. 26.]

- (a) *Register of Trusts* in which shall be entered and numbered, with a series of consecutive numbers, a list of all Trusts which come into his office under the Act, the dates of the orders of Court, a statement of the securities from time to time received and the disposal of the same, and the person or persons to whom the income is payable, and, as far as shall be known, the persons entitled immediately in remainder.
- (b) *Cash Book* to be posted daily and a monthly balance to be shown as each month's accounts are closed.
- (c) *Ledger* containing the account current of each separate Trust, showing a detailed debit and credit of such Trust, distinguishing cash from securities.

Register of Trusts.

Cash Book.

Ledger.

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I. 48.

Account of
debts.

(d) An account of all debts, not being due from the Government and secured by Promissory Notes of the Government which shall have been due to any estate under the management of the Official Trustee for a period exceeding one year, specifying the securities held for the same, the estimated value thereof, and whether such debts are supposed to be good or otherwise.

Pass Book.

(e) *Pass Book* with the Bank of Bengal.

Commission
Book.

(f) *Commission Book* showing monthly the amount of commission due to the Official Trustee in respect of each several Trust.

Register of
remittance
to Europe.

(g) *Register of payments* to the Bank of Bengal on account of sums remitted to Europe payable through the Administrator General's Agent at the India Office, London, specifying the Trusts on which the same have been remitted.

Account of
securities.

(h) An account of all Government and all other securities in the hands of the Bank of Bengal and Official Trustee, respectively. The Secretary and Treasurer of the Bank of Bengal, or such person as he shall appoint for that purpose, shall by his signature in such book, acknowledge the receipt of all the securities handed to him and the entry of all securities delivered over.

Schedule of
existing
Trusts.

(i) *Schedule* prepared yearly under section 22 of the Act showing the gross amount of all sums of money received or paid by him on account of each Trust of which he is trustee, and the balances during the year ending on the 31st day of December next before the day of delivering such schedule, and a list of all securities received on account of each of the said Trusts during the same period, showing which of such securities remain under the charge of the Official Trustee, and which of them have been sold or disposed of.

Schedule of
Trusts ended

(j) *Schedule* prepared yearly under section 22 of the Act of all Trusts which shall have

come to an end, or of which the Official Trustee shall have ceased to be the trustee, and the property the subject of which shall have been paid or made over to the persons entitled to the same, or to new trustee, specifying the nature and amount or value of such property and the persons to whom paid or made over.

49. Whenever the cash balance belonging to any Trust shall amount to rupees five hundred, after providing for ascertained current demands, it shall be invested by the Official Trustee in Government securities.

Investment of cash balance.
[C. 36.]

50. The Official Trustee shall not retain in his hands a larger sum in cash than Rs. 1,000. Any excess beyond this amount shall be lodged to his credit in the Bank of Bengal.

Cash in excess of Rs. 1,000.
[C. 37.]

51. Every payment charged in his general Cash Account shall be supported by a corresponding voucher.

Voucher.
[C. 38.]

52. The Official Trustee shall make his remittances on account of parties in Europe to the treasury at the India Office by Government Bills, at such rates as the Government shall from time to time allow.

Remittance to Europe.
[C. 39.]

53. All Government and other negotiable securities transferred to the Official Trustee shall be specially endorsed to him by his name of office, and on all securities vested in him under section 10 of the Act shall be endorsed a memorandum signed by the Official Trustee, stating that such securities have become vested in him under the provisions of the said enactment.

Securities how to be endorsed.
[C. 40.]

54. All Government and other negotiable securities standing in the name of the Official Trustee shall be deposited in the Bank of Bengal, and no securities so deposited with the said Bank shall be removed from its custody for the purpose of sale or otherwise, except under an order to be obtained from a Judge in Chambers on petition, verified by affidavit specifying the purpose of such removal.

Securities in the name of the Official Trustee to be deposited in the Bank of Bengal, and not withdrawn without order.
[C. 41.]

55. (a) The accounts of the Official Trustee shall be audited once in every year by the Auditors appoint-

Accounts to be audited.

Ch. XXXVIII.

rr. 55—58.

[C. 44(a).]

ed under the Act, and in order to the timely preparation of the schedule which is provided for by section 22 of the Act, the said account shall be closed yearly up to the 31st December.

Expenses of audit.

[C. 44(b).]

(b) The expenses of lit, etc., shall be divided among the whole of the T...s under the management of the Official Trustee by a percentage rate on the amount of the annual income of such estates, omitting, in such calculations, all incomes or part of incomes being less than Rs. 100.

Rule under sections 2 and 3 of the Destruction of Records Act, III of 1879.

Destruction of records.

[B. 825.]

56. The books and papers mentioned in the list below shall be destroyed or disposed of by the Registrar, at the times mentioned therein or as soon after as may be convenient.

List.

Office of Keeper of Records and Muniments.

(1) Unclaimed books and papers deposited by suitors previous to the year 1854 and now in the custody of the Registrar (and of which the present ownership cannot be traced) immediately.

(2) Such books and papers from the Mayor's Court and Supreme Court as have become illegible or useless from decay, or from the ravages of white-ants, immediately.

(3) *Præcipes* and drafts and other papers not filed as of record and not being exhibits, three years after the final disposal of the suit.

(4) Fee books including books showing amount of stamps cancelled and bespeak books, three years, and one year respectively, from the date of the last entry.

Office of Registrar and Taxing Officer.

(5) Such books and papers deposited by suitors and now in the custody of the Registrar and Taxing Officer, as have been unclaimed for 20 years since the disposal of the cause or suit, in which such books and papers were deposited (and of which the present ownership cannot be traced), unless in special cases, where

the Registrar and Taxing Officer shall think it better to preserve such books or papers, immediately.

(6) Such unclaimed books and papers deposited by suitors in causes or suits already concluded, as have become illegible, or useless from decay or from the ravages of white-ants, immediately.

(7) Affidavits of publication of notices of sales by the Registrar, five years after the confirmation of the sale by the Court.

(8) Affidavits of publication of notices to creditors, five years after the report of the Registrar, Official Referee, Assistant Referee or any Assistant Registrar as to the claims of such creditors has been confirmed by the Court.

(9) Affidavits of service of warrants to tax bills of costs, five years after taxation of the bill.

(10) *Præcipes* and drafts other than drafts of reports, three years after the final disposal of the cause or suit.

(11) Fee books and books showing amount of stamps cancelled, six years from date of last entry.

Official Assignee's Office.

(12) Books and papers deposited by insolvents, twenty years after the insolvent has filed his schedule, except in cases where the Judge in Insolvency shall otherwise direct, or where, in the opinion of the Official Assignee, it may seem desirable that such books and papers should be preserved.

Amendment.

57. Amendments in pleadings, which are made only for the purpose of rectifying some clerical error or errors in names, dates or sums, may be made on an order in Chambers, without notice. Unless otherwise ordered, a copy of the order shall be served on the opposite party or parties.

Ex parte
amendments.
Service of
order.
[B. 137
(new).]

58. The attestation of any amendment under O. VI, rr. 16 and 17, O. XXI, r. 17, or O. XLI, r. 3, of the Code shall, unless otherwise ordered by the Court, be done by the Registrar or Master.

Attestation
of amend-
ment.
[Cf. O. 172.]
[Cf. B. 139.]

CL. XXXVIII.
R. 50-64.

Return of Documents.

In case judgment *ex parte* or by default documents to be kept for 30 days. Return of where no application to set aside judgment.
[C. 499.]

59. In all cases in which judgment shall be passed *ex parte*, or by default, the Registrar shall keep the documents produced in the suit until the expiration of thirty days from the date of the judgment; and, where there is no application to set aside the judgment within such thirty days, then the Registrar may, and shall, unless the Court or a Judge shall otherwise order, deliver the same to the person who produced the same.

Where appeal or review, copy to be kept of document ordered to be delivered out.
[Cf. C. 500.]

60. In cases in which a review of judgment shall be granted until such judgment be reviewed or the application to review the same be withdrawn, no document shall be delivered out, unless by order of the Court or a Judge, and unless a certified copy be substituted therefor by the person applying for the document, and unless such person undertakes to produce the original if required to do so.

Procedure as to return of documents in other cases.
[New.]
[Cf. C. 497, 498.]

61. In all other cases the procedure to be followed by the Registrar as to return of documents shall be that laid down in O. XIII, r. 9 of the Code. Where any person desires to prevent the return of any documents in ordinary course, he must obtain an order from a Judge.

Time.

How days are to be reckoned.
[Cf. B. 266.]
[Cf. C. 46.]

62. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Court, and not coming under the Statute of Limitation, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday or other day on which the Court is closed, in which case, the time shall be reckoned exclusively of that day also, and any succeeding day or days on which the Court continues closed.

Where clear days.
[New.]

63. Where any particular number of days, expressed to be clear days, is prescribed by the rules and practice of the Court, the same shall be reckoned exclusive both of the first and the last day.

Month means calendar month.
[B. 267.]

64. Where by these rules, or in any decree or order, time for doing any act or taking any proceedings is limited by months, and where the word "month" occurs in any document which is part of any legal

procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed.

65. The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

Power to enlarge or abridge time.
[B. 269.]
[R. S. C. O. LXIV, r. 7.]

Where irreparable mischief would be done by acceding to a tardy application, the person who has failed to act within the proper time ought to be the sufferer. In other cases the objection of lateness ought not to be listened to, and any injury caused by the delay may be compensated for by the payment of costs (*per* Bramwell, J., *Atwood v. Chichester* (1878), 3 Q. B. D. 723 C. A.; and see *Eaton v. Storer* (1882), 22 Ch. D. 91 C. A.).

66. Service effected after Court office hours shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day.

Service after Court office hours.
[New.]

Court Office hours.—See Chapter IV, Rule 1, p. 133.

Costs.

67. An attorney, where he has taxed his bill of costs against his client, may apply in Chambers on summons for an order against his client or the legal representatives of such client for payment of the sum allowed on taxation or such sum as may then remain due. The Judge on hearing the summons may make such order or refer the parties to a suit. Such order where made may be executed under O. XXI of the Code as a decree for money.

Payment of attorney's costs, how enforceable.
[C. 142A.]
[B. 315.]

68. Where, upon the hearing of any suit or matter, it appears that the same cannot conveniently proceed by reason of the attorney for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which, according to the practice, ought to have been delivered, such attorney shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

Where attorney personally liable for costs.
[B. 272.]
[Cf. C. 141.]
[R. S. C. O. XLV, r. 5.]

Ch. XXXVIII.**rr. 69—75.**

Costs where
defended
suit might
be transferred
to the
Peremptory
Undefended
List.

[C. 213.]

Costs in the
discretion of
Court or
Judge.

[New.]

69. Unless the Court or Judge shall for special reasons otherwise direct, a plaintiff, who allows a suit, which might be transferred to the Peremptory List of Undefended Suits, to continue therein and to be heard as a defended suit, shall, where successful in obtaining a decree with costs, be only allowed his costs on scale 2 up to the time when he was in a position to apply for the transfer of the suit to the Peremptory List of Undefended Suits and thereafter on scale 1.

70. Subject to the provisions of any statute and these rules, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court or Judge.

Security.

No attorney
or officer of
Court to be a
surety.
Officer not
to be surety
or bail.

[Cf. C. 6.]

71. Except with the express permission of a Judge, no attorney or officer of the Court or Sheriff or his deputy, or any Sheriff's officer or any of their clerks shall be a surety in any suit, appeal or matter in the Court nor be bail for any prisoner committed for trial at the Court or admitted to bail by the Court.

This and the following rules as to security are, except as to a guarantee society, our old rules or practice.

Security to
be given to
the Registrar
unless other-
wise provid-
ed by law.

[Cf. C. 7.]

72. Where security is required to be taken, it shall, unless otherwise provided by law or prescribed by these rules, be given to the Registrar or to such other officer of the Court as the Court or a Judge may specially direct, and the Court or a Judge may permit or order him to assign the same to any person for the purpose of suing on the same on such terms as it may think fit.

Filing of
office copy of
decree or
order for
taking
security.

[New.]

73. An office copy of every decree or order directing security to be given to the satisfaction of the Registrar may be filed in the Account Department of the Registrar's office by any party and an appointment obtained for proceeding with the taking of security.

Taking of
security
without
office copy.

[New.]

74. The taking of security, where so directed by the Court or a Judge, or in a case of urgency, where the officer thinks fit, may be proceeded with before the office copy has been filed under the last rule.

Issue of
notice.

[New.]

75. The Registrar shall issue such notice and to such persons as he may think proper, provided always that where duly endorsed Government Promissory

Notes are lodged, or cash to the amount of the security required is paid to him, the issue of notice may be dispensed with.

76. Every person, other than a Guarantee Society, offering himself as a surety, shall, where so required, produce before the Registrar his title deeds and vouchers, and make an affidavit of justification or be examined by the Registrar on oath or solemn affirmation, as the case may be, touching the value of his property and the debts and liabilities to which it is subject; after being examined and allowed, the surety shall sign the bond, and where the Registrar so requires, deposit his title deeds and vouchers. Production of title deeds.
Affidavit of justification.
Examination. [New.]

77. Affidavits of justification shall be deemed insufficient unless they state that each person justifying is worth the amount required, over and above what will pay his just debts and over and above every other sum for which he is then surety. Insufficiency of affidavit of justification. [New.]

78. A Guarantee Society, duly approved of by the Full Court, may be accepted as surety upon its joining in a bond with the person ordered to give the security. Guarantee Society as surety. [New.]

Guarantee Society.—See note to Rule 16 of Chapter XXXV, *ante*, p. 351. No Society has, so far, been approved as surety for any matters other than Administration matters.

79. Rules 17 to 19 of Chapter XXXV shall *mutatis mutandis* apply to a Guarantee Society under the last preceding rule. Rules applicable thereto. [New.]

CHAPTER XXXIX.

**ASSESSORS IN SUITS OF SALVAGE, TOWAGE
OR COLLISION.**

Registrar to
frame list
of assessors.

[C. 729.]

To be
approved by
the Chief
Justice.
And
published
in the
*Calcutta
Gazette.*

1. The Registrar shall from time to time frame a list, to be approved by the Chief Justice, without whose approval it shall have no validity, of persons of nautical skill and experience residing or having places of business within the jurisdiction of the High Court, to act as assessors in any Admiralty or Vice-Admiralty suit of salvage, towage, or collision, under the provisions of section 140 of the Code of Civil Procedure, and shall cause the list to be published in the *Calcutta Gazette*.

Persons
named in the
list liable to
be summoned.

[C. 730.]

2. Any persons named in the said list may be summoned to act as assessors in any such suit as aforesaid.

Amount of
assessors' fee.

[C. 731.]

3. Every person who shall so act as an assessor shall be entitled to a fee of four gold mohurs for each day's attendance.

Application
to summon
assessors.

[C. 732.]

4. Either party in any such suit as aforesaid may apply that it may be heard with the assistance of assessors. Unless otherwise ordered, the application should be made by summons as follows:—Where the suit is pending before the Court in its Original Jurisdiction, to the Judge before whom it is appointed that the suit shall be heard, or where the suit is pending in appeal, to the Judges or one of the Judges before whom it is appointed that the suit shall be heard in appeal.

Letter in the
nature of
summons.
To be served
as process.

[C. 733.]

5. Where assessors are to be summoned, this shall be done by a letter, under the signature of the Registrar, which may be served in like manner as process under the provisions of the Code.

Assessors'
fees by
whom to be
deposited.

[C. 734.]

6. The assessors' fees shall, before each day's hearing, be deposited with the Registrar by the party at whose instance they were summoned, or, in default thereof, by the other party.

Ch. XXXIX.

R. 7—6.

7. The Registrar shall pay the fees so deposited with him to the assessors, or, in any case where their attendance is not required, shall, unless otherwise ordered, refund the same to the party by whom the same was deposited.

How to be
disposed of.
[C. 735.]

8. Unless otherwise ordered, all fees paid to assessors under these rules shall be deemed to be costs in the suit.

To be deemed
costs in the
cause.
[C. 736.]

CHAPTER XL.

GENERAL RULES.

Forms to be
observed.

[Cf. B. 821.]

1. The forms set forth in the appendices of forms with such variations as the circumstances of each case may require shall be used for the respective purposes in these rules mentioned.

Section 2,
Code of Civil
Procedure,
and General
Clauses Act,
1897, to
apply.

[B. 822.]

2. The provisions of section 2 of the Code and of the General Clauses Act, 1897, shall apply to these rules.

Present
practice.

[B. 823.]

3. Where no other provision is made by the Code or by these rules the present procedure and practice remain in force.

Interpretation of Terms.

[New.]

4. In these rules, unless there is anything repugnant in the subject or context :—

(1) "*The Act*" refers to the Act to which the chapter or part of a chapter relates in which the word occurs.

(2) "*Code*" means the Code of Civil Procedure, 1908.

(3) "*Court*" includes a Judge sitting in Court.

[Cf. C. 808.]

(4) "*Folio*."—The folio for all purposes shall consist of 90 words and 7 figures shall be counted as one word. In calculating the number of folios, the whole pleading or proceeding including the verification clause, if any, shall be reckoned as one document and in the case of copying charges all documents annexed or exhibited thereto shall be reckoned as part thereof. Part of a folio shall be reckoned as a folio.

(5) "*Judge*" means a Judge sitting in Chambers.

Master

(6) "*Master*" means the Master of the High Court of Judicature at Fort William in Bengal in its Original Jurisdiction.

- (7) "*Originating summons*" means every summons other than a summons in a pending suit or matter. Originating summons.
- (8) "*Party*."—Except as appears expressly or from the context to the contrary, the words "the party" or "the parties" shall mean the attorney or attorneys for such party or parties where the party or parties is or are represented by an attorney or attorneys.
- (9) "*Proper officer*" means an officer to be ascertained as follows:— Proper officer.

Where any duty to be discharged under the Code or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same.

Where any new duty is under the Code or these rules to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed to discharge the same.

- (10) "*Registrar*" means the Registrar of the said Court in its Original Jurisdiction. Registrar.
- (11) "*Rule*" refers to a rule of the chapter in which the word occurs.
- (12) "*Taxing Officer*" means the Taxing Officer of the said Court in its Original Jurisdiction. Taxing Officer.

5. The rules in this and the preceding chapters may be cited as "The Rules of the High Court, 1914": and they shall come into operation on the 15th day of April 1914, and shall also apply, as far as may be practicable, to all proceedings taken on or after that day in all suits and matters then pending. Rules how to be cited.
Date of coming into operation.
Application to pending matter.

[New.]

6. The said rules shall stand in lieu of all existing rules of the High Court of Judicature at Fort William in Bengal, Original Side, treating of matters contained in the aforesaid rules, and such existing rules are hereby annulled. Existing rules annulled.
[New.]

APPENDICES OF FORMS. (C)

APPENDIX A.

FORM No. 1.

(Chapter I, rule 36.)

Questions as to due service of articles of clerkship to be answered by the clerk.

1. What was your age at your last birthday immediately preceding the date of your articles? Questions to be answered by articulated clerk.

2. Have you served the whole term of your articles at the office where the attorney or attorneys to whom you were articulated or assigned carried on his or their business? And if not, state the reason.

3. Have you, at any time during the term of your articles, been absent without the permission of the attorney or attorneys to whom you were articulated or assigned? And if so, state the length and occasions of such absence.

4. Have you, during the period of your articles, been engaged or concerned in any, and, if any, what profession, business or employment other than your professional employment as clerk to the attorney or attorneys to whom you were articulated or assigned?

5. Have you, since the expiration of your articles, been engaged or concerned, and for how long a time, in any, and, if any, what profession, trade, business, or employment other than the profession of an attorney?

6. Are you an undischarged insolvent?

FORM No. 2.

(Chapter I, rule 36.)

Questions to be answered and certificate to be given by the attorney or attorneys with whom the clerk may have served the time or any part of the time under his articles.

1. Has A. B. served the whole time of his articles at the office where you carry on your business? And if not, state the reason. Questions to be answered and certificate given by attorney.

(¹) See Ch. XL, r. 1, *ante*.

App. A.
Form 3, 2.

2. Has the said A. B., at any time during the term of his articles, been absent without your permission? And if so, state the length and occasions of such absence.

3. Has the said A. B., during the period of his articles, been engaged or concerned in any, and, if any, what profession, business, or employment other than his professional employment as your articulated clerk?

4. Has the said A. B., during the whole term of his clerkship, with the exceptions above-mentioned, been faithfully and diligently employed in your professional business of an attorney?

5. Has the said A. B., since the expiration of his articles, been engaged or concerned, and for how long a time, in any, and, if any, what profession, trade, business, or employment other than the profession of an attorney?

6. How long did you practise as an attorney before the said A. B. was bound under his articles to you?

7. Have you, during the whole period of the service of the said A. B., under his articles to you, been actually practising as an attorney in this Court on your own account, and not merely as an assistant to any other attorney or firm of attorneys?

And I do hereby certify that the said A. B. has duly and faithfully served under his articles of clerkship (or assignment, as the case may be) bearing date, etc., for the term therein expressed, and that he is a fit and proper person to be admitted an attorney.

FORM No. 3.

(Chapter I, rule 66.)

Notice of
intention to
appear at
examination
and to be
admitted as
attorney.

Notice is hereby given that A. B., of No. in the town of Calcutta, and who was lately (or is now) under articles of clerkship to Mr. C. D. of , Attorney-at-Law [and who was also lately (or is now) under articles of clerkship by assignment from the said Mr. C. D. to Mr. E. F. of aforesaid, Attorney-at-Law] intends to present himself at the next examination to be held under rule 16 [or rule 33, or rule 34] of the Rules for the admission of attorneys; and also intends [if the examination be under rule 16 or rule 34] on passing such examination, to apply to be admitted an attorney of His Majesty's High Court of Judicature at Fort William in Bengal.

Dated this day of

191 .

APPENDIX B.

FORM No. 1.

(Chapter VI, rule 3.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.ORDINARY ORIGINAL CIVIL JURISDICTION (*or as may be*).*(Number and title of the suit, or title of the matter.)*

Let all parties concerned attend before _____ in Chambers Form of summons for an order in Chambers.
 in the Court-house, on the _____ day of _____
 191____, at _____ o'clock in the forenoon [*If a short return is granted, add by special leave*] on the hearing of an application on the part of (*state on whose behalf the application is made* and the precise object of the application*). Dated this _____ day of _____ 191____.

This summons was taken out by A, attorney for the applicant. To (*insert the names of the attorneys or persons to be served, e.g., Mr. C. D., attorney for the plaintiff, or defendant, or petitioner, or respondent E. F.*).

To the plaintiff, or defendant, or petitioner, or respondent G. H., *or as may be*.

Grounds:—

[*Here insert a list of the materials relied on, e.g., affidavit of _____.*]

FORM No. 1A.

(Chapter VI, rule 15.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.ORDINARY ORIGINAL CIVIL JURISDICTION (*or as may be*).

Take notice that the abovenamed plaintiff (*or defendant*) Notice of appeal from Registrar or Master. intends to appeal against the decision of the Registrar (*or Master*) given on the _____ day of _____ ordering Registrar or Master. (*or refusing to order*) that

And further take notice that you are required to attend before the Judge in Chambers at the Court-house on the _____ day of _____ in the forenoon, on the hearing

* The full name, or title of honour, or corporate title, of the party on whose behalf the application is to be made, should be here stated, but if the application is made by a sole plaintiff, or by all the plaintiffs, or by a sole defendant, or by all the defendants, the names need not be set forth. The place of residence and description, or addition of the applicant, should be stated, if he is not shown to be a party to the suit or proceeding. Where the applicant is under disability, and the application is made by his next friend or guardian, the full name of the next friend or guardian should be stated; and if not made in a suit, his place of residence and description, or addition, should be shown.

App. B.
Forms 1A, 2.

of an application by the said plaintiff (*or defendant*) that (*here state the order sought to be obtained*). And further take notice that it is the intention of the said to attend by Counsel (*strike out if not to be attended by Counsel*).

To, etc.

(Signed, etc.)

FORM No. 2.

(Chapter VIII, rule 2.)

COURT No.

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Summons
for disposal
of suits.

Plaint filed 19 .

Plaintiff.

Summons issued 19 .

Defendant.

The defendant re-
quired by the Court to file
written statement
within days from the
service upon of this
writ.

GEORGE V, by the Grace of God of
the United Kingdom of Great Britain
and Ireland, and of the British Domin-
ions beyond the Seas, King, Defender of
the Faith, Emperor of India, and so
forth.

To

GREETING: Whereas

you are hereby required to cause an
appearance to be entered for you in the
office of the Registrar of this Court
within days from the service upon you
of this summons, exclusive of the day of
such service; and are summoned to appear
before this Court in person or by an ad-
vocate duly instructed by an attorney of
the Court to answer the Plaintiff's claim
on the day the case is set down for hear-
ing, upon which date you must be pre-
pared to produce all your witnesses and
all documents in your possession or power
upon which you intend to rely in support
of your case.

And you are hereby required to take
notice that in default of your causing an
appearance to be so entered, the suit will
be liable to be heard and determined in
your absence.

Witness (the name of the Chief Justice),
Chief Justice at Fort William aforesaid,
the day of in the year
of our Lord one thousand nine hundred
and

Attorney.

Master.

Address—

NOTE 1.—An appearance in person or through attorney is to be entered in the office of the Registrar of this Court, on its Original Side, within the time limited. In default thereof, the suit will be liable to be heard *ex parte*.

NOTE 2.—The written statement called for must be filed within the time limited, the defendant having first entered an appearance. In default thereof, the suit will be liable to be heard *ex parte*.

NOTE 3.—An officer or soldier who cannot obtain leave of absence, may (under the provisions of Order XXVIII, Rule 1, Act V of 1908) authorise any person to appear for him.

NOTE 4.—This writ must be returned to the High Court immediately after the service thereof, or if not served and the time for the return thereof shall not have been extended, on the day of next.

NOTE 5.—Should you apprehend your witnesses will not attend of their own accord, you can have subpoena from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, and on payment to them of the fees and expenses prescribed by the Rules of this Court.

NOTE 6.—If you admit the demand you should pay the money into Court with the costs of the suit to avoid execution of the decree which may be against your person or property, or both, if necessary.

Master.

FORM No. 3.

(Chapter VIII, rule 2.)

COURT No.

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaint filed 19 .

Plaintiff. Summons in
summary

Summons issued 19 .

Defendant. suits.

GEORGE V, by the Grace of God of
the United Kingdom of Great Britain

and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

To

GREETING: Whereas

has instituted a Suit in this Court against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rupees

for principal and interest due to him as the of a of which a copy is hereto annexed. You are hereby summoned to obtain leave from the Court, within ten days from the service hereof, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled, at any time after the expiration of such ten days, to obtain a decree for any sum not exceeding the sum of Rupees

and such sum for costs as the Taxing Officer of this Court shall allow in respect to this suit under the heading "Class 1, Short Causes." Leave to appear may be obtained on an application made to the sitting Judge in Chambers supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in this suit. Witness (*the name of the Chief Justice*), Chief Justice at Fort William aforesaid, the day of in the year of Our Lord one thousand nine hundred and

Master.

Master.

Attorney.

NOTE.—This writ must be returned to the High Court immediately after the service thereof, or, if not served, and the time for the return thereof shall not have been extended, on the day of next.

FORM No. 4.

(Chapter VIII, rule 15.)

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

*Plaintiff.**Defendant.*

To

The Registrar.

Please enter an appearance, for the defendant (*name of* Memo. of
defendant), to the plaint in the above suit. appearance
through

Dated the day of 19 . attorney.

*(Signature of Attorney.)*Place of business of Attorney

FORM No. 5.

(Chapter VIII, rule 15.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

*Plaintiff.**Defendant.*

To

The Registrar.

Please enter an appearance, for me (*name of defendant*) Memo. of
defendant, to the plaint in the above suit. appearance
in person.

Dated this day of 19 .

*(Signature of defendant.)*Place of residence of defendant

APPENDIX C.

FORM No. 1.

(Chapter XI, rule 1.)

Summons for
interrogato-
ries.

Let the plaintiff (*or defendant*) attend before the Registrar (*or Master as the case may be*) in Chambers at the Court-house on the day of 19 , at o'clock in the forenoon, on the hearing of an application on the part of the defendant (*or plaintiff*) that the be at liberty to deliver to the interrogatories in writing and that the said do within ten days answer the questions in writing, by affidavit.

FORM No. 2.

(Chapter XI, rule 8, O. XI, r. 11, C. P. C.)

Summons
for order
to answer in-
terrogatories.

[*Formal parts, see Form No. 1*] on the part of the plaintiff (*or as may be*) that the defendant (*or as may be*) may be ordered within days after service, to make and file a full and sufficient affidavit in answer to the interrogatories (*or to the interrogatories numbered of the interrogatories*) delivered by the plaintiff (*or as may be*) and that the said defendant (*or as may be*) may be ordered to *pay* the costs of this application.

FORM No. 3.

(Chapter XI, rule 8, O. XI, r. 11, C. P. C.)

Summons to
consider
sufficiency
of answer,
and for
order to
answer
further

[*Formal parts, see Form No. 1*] on the part of the plaintiff (*or as may be*) to consider the sufficiency of the answer of the defendant (*or as may be*), filed the day of 19 , to the interrogatories numbered of the interrogatories delivered by the plaintiff (*or as may be*) for the examination of the said defendant (*or as may be*), and that the said defendant (*or as may be*) may be ordered, within days after service, to make and file a full and sufficient affidavit in further answer to the said interrogatories numbered . And that the said defendant (*or as may be*) may be ordered to pay the costs of this application.

FORM No. 4.

(Chapter XI, rule 8, O. XI, r. 11, C. P. C.)

Summons for
order to

[*Formal parts, see Form No. 1*] on the part of the plaintiff (*or as may be*) that, notwithstanding the objections raised by

the defendant (or as may be), by his affidavit, filed the day of 19 , to answer the interrogatories numbered of the interrogatories delivered by the plaintiff (or as may be) for the examination of the said defendant (or as may be) the said defendant (or as may be) may be ordered, within days after service, to make and file a full and sufficient affidavit in answer to the said interrogatories: and that the said defendant (or as may be) may be ordered to pay the costs of this application.

answer,
notwith-
standing
objection.

FORM No. 5.

(Chapter XI, rule 8, O. XI, r. 12, C. P. C.)

[*Formal parts, see Form No. 1*] on the part of the plaintiff (or defendant); that the defendant (or plaintiff) may be ordered, within (four) days after service, to make and file a full and sufficient affidavit

Summons
for an
affidavit as
to the pos-
session of
documents.

(Or if against a corporation or a company, say to file a full and sufficient affidavit to be made by their Director, Secretary, or other principal officer) stating whether he has, or has had, in his possession or power any, and, if any, what documents relating to the matters in question in this suit and accounting for the same.

FORM No. 6.

(Chapter XI, r. 8, O. XI, rr. 14 and 18, C. P. C.)

[*Formal parts, see Form No. 1*] on the part of the plaintiff (or defendant) that the said defendant (or plaintiff) may be ordered, at all reasonable times, upon reasonable notice, to produce at (state where) the following documents namely. And that the applicant, his attorneys and agents, may be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof, and extracts therefrom, as the applicant shall be advised.

Summons
for pro-
duction of
documents,
and for leave
to inspect
same out of
Court.

FORM No. 7.

(Chapter XI, r. 8, O. XI, r. 13, C. P. C.)

(Formal parts, see Form No. 1.)

On the part of the plaintiff (or defendant) to consider the sufficiency of the affidavit of the defendant (or plaintiff) A. B. filed on the day of 19 , as to the possession of documents, pursuant to the order dated the day of 19 , and that the said defendant (or plaintiff) may be ordered to pay the costs of this application.

Summons
to consider
the suffi-
ciency of an
affidavit as
to documents.

App. C.
Form 8.
App. D.
Form 1.

FORM No. 8.

(Chapter XI, rule 8, O. XI, r. 19 (3), C. P. C.)

(Formal parts, see Form No. 1.)

Summons
for further
affidavit as to
particular
documents.

On the part of the plaintiff (or as may be), that the defendant (or as may be), may be ordered, within days after service, to make and file a full and sufficient affidavit, stating whether he has, or has had, in his possession or power any, and (if any) which of the following documents relating to the matters in question in this suit, and accounting for the same, that is to say (*Here describe, as precisely as possible, the documents as to which discovery is sought*).

APPENDIX D.

FORM No. 1.

(Chapter XIII, rule 13.)

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.*

Originating
summons.

Upon reading the plaint herein and upon hearing , attorney for the plaintiff, I do order that the defendant above-named, do attend before the sitting Judge in Chambers within eight days after service [*or on the day of*] for the determination of the following questions:—

(*Here set out the questions which the plaintiff desires to have determined.*)

Dated the _____

Judge._____
Attorney for the Plaintiff.

NOTE.—If the defendant does not appear at the time and place above-mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

* The defendants shall be the persons to be served with the originating summons under rule 3, 5, or 12, as the case may be.

*Revised
Agenda for
14/9, Pt. II
h. 1386.*

APPENDIX E.

FORM No. 1.

(Chapter XVII, rule 10.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

1	2	3	4	5	6	7	8	9	10
Number of suit.	Names of the parties. (Where attorney against client, write : Attorney vs. client.)	The date of the Decree (or Order).	Whether any appeal has been preferred from the Decree (or Order).	Whether any and what adjust- ment of the matter in dispute has been made between the parties subsequently to the Decree (or Order).	1. The date and nature of any writ issued before or after judgment. 2. Whether any and what pre- vious application has been made for execution of the Decree (or Order) and with what result.	The amount of Debt or Compens- ation with the interest, if any, due upon the Decree (or Order) or other relief granted thereby.	The amount of costs, if any, awarded.	The name of the person against whom enforcement of the Decree (or Order) is sought.	The mode in which the assistance of the Court is required.

Application
for execution
under O.
XXI, r. 11
(2) of the
Code.

(Signature.)

I, _____, the abovenamed _____, do
declare that what is stated in column () is true to my
own knowledge and what is stated in column () I believe
to be true and that the description of the property in the
schedule hereto and the specification of the judgment-debtor's
share or interest therein is true to my own knowledge (or is
stated on information and belief and I believe the same to be
true, as the case may be).

(Signature of Judgment-creditor.)

Sworn (or solemnly affirmed) at Calcutta this _____ day
of _____ 19 _____.

Before me.

Commissioner.

App. R.
1, 2.

(Where attachment and sale of immoveable property is sought):—

SCHEDULE.

(Description and specification of property.)

I declare that what is stated in the above description is true to the best of my knowledge and belief and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

(Signature of Judgment-creditor.)

FORM No. 2.

(Chapter XVII, rule 11.)

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.

To

Notice under
section 145
of the Code.

Take notice that you are hereby required under section 145 of the Code of Civil Procedure to appear in person or by advocate or attorney of this Court before the in Chambers on the day of at o'clock in the forenoon, to show cause (if any you have, but not otherwise) why the decree passed (or order made) against on the day of in the above suit should not be executed against you as surety for the said defendant.

Dated this day of 19 .

Attorney for

Registrar.

FORM No. 3.

(Chapter XVII, rule 11.)

SUIT No. of 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

*Plaintiff.**versus**Defendant.*

To

Take notice that you are hereby required under rule 2 of Notice under
Order XXI of the Code of Civil Procedure to appear in person O. XXI, r. 2
or by advocate or attorney of this Court before the of the Code.
in Chambers on the day of
at o'clock in the forenoon, to show cause (if any you have,
but not otherwise) why the payment to you by the judgment-
debtor of the sum of Rupees on the day of
should not be recorded and certified in the Register
of the above-mentioned suit.

Dated this day of 19 .

*Attorney for**Registrar.*

FORM No. 4.

(Chapter XVII, rule 11.)

SUIT No. of 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

*Plaintiff.**versus**Defendant.*

To

Take notice that you are hereby required under rule 16 of Notice under
Order XXI of the Code of Civil Procedure to appear in person O. XXI, r.
or by advocate or attorney of this Court before the 16 of the
in Chambers on the day of Code.
19 at o'clock in the forenoon, to show cause (if any you
have, but not otherwise) why the decree passed or order made

App. B.
Forms 4-6.

in the above suit on the _____ day of _____ in
favour of _____ and by _____ transferred to
_____ should not be executed by the said transferee against
you the said _____.

Dated this _____ day of _____ 19 .

Attorney for _____

Registrar.

FORM No. 5.

(Chapter XVII, rule 11.)

SUIT No. _____ OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.

To

The _____ abovenamed

Notice under
O. XXI, r.
22 of the
Code.

Take notice that you are hereby required under rule 22 of
Order XXI of the Code of Civil Procedure to appear in person
or by advocate or attorney of this Court before the
_____ in Chambers on the _____ day of
19 _____ at _____ o'clock in the forenoon, to show cause why the
decree pronounced against you on the _____ day of
_____ in the above suit should not be executed against you.

Dated this _____ day of _____ 19 .

Attorney for _____

Registrar.

FORM No. 6.

(Chapter XVII, rule 11.)

SUIT No. _____ OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.

To

The _____ abovenamed

Notice under
O. XXI, r.
34 (2) of the
Code.

Take notice that you are hereby required under rule 34 (2)
of Order XXI of the Code of Civil Procedure to state your
objections in writing, if any you have, to the accompanying

App. E.
Forms 8, 9.
App. F.
Form 1.

for sale made
one year after
attachment.

pronounced in this suit on the _____ day of _____
one thousand _____ you are hereby
required, being served with this notice, on or before the
day of _____ to appear before the
in Chambers on the _____ day of _____
at _____ o'clock in the forenoon to show cause why
the said property should not be sold in execution of the said
decree.
order.

Dated this _____ day of _____ 19 .

By Order of the Court,

Attorney.

FORM No. 9.

(Chapter XVIII, rule 1.)

SUIT No. _____ OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.

Garnishee
notice.

To
Take notice that you are hereby required on or before the
day of _____ 19 to pay to the Sheriff of
Calcutta the sum of _____ attached in your hands by
order dated _____ day of _____ 19 , or
otherwise to appear in person or by advocate or attorney of
this Court before the sitting Judge in Chambers at 11 o'clock
in the forenoon on the day aforesaid and show cause to the
contrary, in default whereof an order for payment may be
passed against you.

Dated this _____ day of _____ 19 .

Attorney for

Registrar.

APPENDIX F.

FORM No. 1.

(Chapter XXI, rule 7.)

Order
appointing
receiver.

It is ordered that the Receiver of this Court (or that A. B.)
be and he is hereby appointed the receiver of the moveable
property and of the rents issues and profits of the immoveable
property belonging to the estate of C. D., the intestate in the
pleadings in this suit named, with power to get in and collect
the outstanding debts and claims due to the estate of the said

intestate and with all the powers provided for in O. XI., r. 1 (d) of the Civil Procedure Code except that he shall not without leave of the Court (1) grant leases for a term exceeding three years or (2) bring suits in a District Judge's Court or a Subordinate Judge's Court except suits for rent or (3) institute an appeal in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs. 1,000 or (4) expend on the repairs of any property in any period of two years more than half of the net annual rental of the property to be repaired such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair. And it is further ordered that the defendants and all persons claiming under them do deliver up quiet possession of the said property moveable and immoveable of the said intestate together with all leases agreements for lease *kabuliyats* accounts books papers memoranda and writings relating thereto to the said receiver. And it is further ordered that the said receiver do take possession of the said property moveable and immoveable and collect the rents issues and profits of the said immoveable property and that the tenants and occupiers do attorn and pay their rents in arrear and growing rents to the said receiver. And it is further ordered that the said receiver shall have power to bring and defend suits in his own name and shall also have power to use the names of the plaintiffs and defendants who are to be indemnified out of the estate and effects of the said intestate. And it is further ordered that the receipt or receipts of the said receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such receiver as aforesaid. And it is further ordered (*where an additional office establishment is required*) that the said receiver shall be allowed to charge to the estate in addition to his own office establishment the following further establishment.

FORM No. 2.

(Chapter XXI, rule 11.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

*Plaintiff.**versus**Defendant.*

I, _____, of _____, the receiver appointed in this suit, make oath (or solemn affirmation) and say as follows:—

Affidavit
verifying
receiver's
account.

1. The account hereto annexed and marked with the letter A is my account of the rents and profits of the immoveable

App. F.
Form 2.
App. G.
Form 1.

property and of the outstanding assets of , the
testator (or intestate) in this suit from the day of
 , 19 , to the day of
 , 19 , both inclusive, and contains a true account
of all and every sum of money received by me or by any other
person or persons by my order or, to my knowledge or belief,
for my use on account, or in respect of the *said rents and*
profits accrued due on or before the said day of
 on an account or in respect of the *said*
assets, except what is included as received in my former
account (or accounts) sworn (or affirmed) by me.

2. The several sums of money mentioned in the said
account, hereby verified to have been paid and allowed, have
been actually and truly so paid and allowed for the several
purposes in the said account mentioned.

3. The said account is just and true in all and every the
items and particulars therein contained, according to the best
of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the
bond given by me, dated the of
19 , are both alive and neither of them has become
insolvent.

(Usual jurat.)

APPENDIX G.

FORM No. 1.

(Chapter XXII, rule 1.)

Order for
commission
to examine
witness.

It is ordered that a commission do issue out of and under
the seal of this Court directed to a person therein named
authorizing him to swear or affirm and examine *vivâ voce*
at (1) and (2) and such other
person or persons as shall be produced before him as witnesses
on behalf of the (*plaintiff or defendant*) And it is further
ordered that the parties to this suit do appear before
the said Commissioner in person or by their agents or
pleaders and that the said commission be made returnable on or
before the day of and that the
evidence to be taken thereunder be read and used at the hear-
ing of this suit saving all just exceptions as to the admissibil-
ity thereof and let the consideration of the question of costs
of and incidental to this application and of issuing and exe-
cuting the said commission and of the return thereof be
reserved until the final disposal of this suit or until the further
order of this Court.

FORM No. 2.

(Chapter XXII, rule 1.)

SUIT No. OF 19 .

GEORGE V. by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth. Writ of
commission.
To

the Commissioner on behalf of the
hereinafter named, GREETING: know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you full power and authority, to swear or affirm and diligently to examine *vivâ voce*

as shall be produced before you as witness
on behalf of the said in a certain Suit No. of
 now pending in our High Court of Judicature at
Fort William in Bengal [wherein

and we further command you that you do at certain days and places to be appointed by you for that purpose of which reasonable notice shall be given to all parties cause the said witness to come before you and then and there examine and cross-examine such witness either upon oath or solemn affirmation, which we hereby give you full power and authority to administer to such witness in the form firstly specified at the foot hereof; and that you do take such examination and reduce the same into writing on parchment or paper; and when you shall have so taken the same you are to send the same (*returnable date as given in the order for the issue of this commission*) to the address of the Registrar of our said High Court of Judicature at Fort William in Bengal in its Original Jurisdiction, closed up under your seal together with such documents as shall be spoken to and marked as exhibits and this writ.] Sealer.

And we further empower you to appoint (if necessary) a competent interpreter to interpret such of the proceedings under this commission as you may deem necessary to have interpreted from or into the English language. And we

App. G.
Form 2.

further command you that the interpreter employed in interpreting the depositions of the said witness to be examined by virtue of these presents shall, before he be permitted to act as such interpreter as aforesaid, take the oath or affirmation lastly specified at the foot hereof which we hereby give you full power and authority to administer to such interpreter. And we do lastly order that the parties to this suit do appear before you in person or by their agents or pleaders. Witness (name of the Chief Justice) Chief Justice at Fort William aforesaid, the day of in the year of our Lord one thousand nine hundred and

Attorney. }

Attorney. }

Registrar.

The execution of this commission appears by a certain schedule hereunto annexed.

Commissioner.

NOTE 1.—The Commissioner shall not be bound to execute this commission unless such a sum as shall think reasonable be deposited with for the expenses of executing the same, and also of summoning the witnesses and defraying their travelling and other expenses.

NOTE 2.—After the deposition of any witness shall have been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary, translated to the witness in order that mistakes or omissions may be rectified or supplied. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination.

Form of the oath or affirmation to be administered to the witness.

You swear (or solemnly affirm in the presence of Almighty God) that the evidence which you shall give in this case shall be true, that you will conceal nothing, and that no part of your evidence shall be false.

So help you God.

Form of the oath or affirmation to be administered to the interpreter.

You swear (or solemnly affirm in the presence of Almighty God) that you understand and speak the and English

languages, and that you will well and truly and faithfully interpret, translate and explain to the witness to be produced before the Commissioner, all questions and answers and all such matters as the Commissioner may require you to interpret, translate and explain.

So help you God.

NOTE.—The words "So help you God" are to be omitted when an affirmation is administered.

APPENDIX H.

FORM No. 1.

(Chapter XXIII, rule 1.)

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Plaintiff.

versus

Defendant.

Take notice that the award of the Arbitrator appointed in this suit under an order of Court, dated the day of 19 , has this day been submitted in my office, and that the same will be filed on either party providing the requisite stamps and that the Court will proceed to pass judgment on such award on the day of .

Notice of
submission
of award.

Dated this day of 19 .

Registrar.

APPENDIX I.

FORM No. 1.

(Chapter XXVI, rule 17.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL, ORDINARY ORIGINAL
CIVIL JURISDICTION (or as may be).

(Number and title of the suit, or title of the matter.)

Summons to
proceed on
reference.

Let all parties concerned attend before the (*Registrar, or other officer conducting the reference*) at the Court-house, to take into consideration the matter of the reference directed (or to proceed with the accounts and enquiries directed to be taken and made) by the decree (or order) made in this suit and dated the day of

Dated this day of 191 .

Registrar or Officer.

The summons was taken out by A. B.,
Attorney for the applicant.

To

(Insert the name of the Attorney or person to be served, thus:—

Mr. C. D., Attorney for the Plaintiff or Defendant, or
Petitioner or Respondent.)

To

The Plaintiff, or Defendant, or Petitioner, or Respondent
G. H., or as may be.

FORM No. 2.

(Chapter XXVI, rule 60.)

Advertisement for the
creditors of
a deceased
person to
come in with
their claims.

Pursuant to a decree (*or an order*) of the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, made in (*set out the number and title of the suit or title of the matter*), the creditors of A. B., late of (*residence and additions, as thus: No. 6, Park Street, in the town of Calcutta, merchant*), who died in or about the

month of _____ 191 , are, on or before the
day of _____ 191 , to send to the office of the
Registrar of this Court, on its Original Side, their names,
addresses, and descriptions, the full particulars of their claims,
a statement of their accounts, and the nature of the securi-
ties (if any) held by them; or in default thereof, they will be
peremptorily excluded from the benefit of the said decree (or
order).

Every creditor, holding any security, may produce or
transmit the same to the Registrar, with the particulars of
his claim, or shall produce the same before the Honourable
Mr. Justice _____, in the Court-house,
on _____ the _____ day of _____ *191 , at
_____ of the clock in the _____ noon, being the time
appointed for adjudicating on the claims.

Registrar or Officer.

FORM NO. 3.

(Chapter XXVI, rules 62, 72.)

(Formal parts as in No. 1.)

You are hereby required to prove the claim sent in by you Notice to creditor to prove his claim.
against the estate of A. B., deceased. You are to file such
affidavit as you may be advised in support of your claim, and
give notice thereof to Mr. B. C., the attorney for the plaintiff
(or for the party conducting the reference), on or before the
day of _____ 191 ; and to attend by
your attorney, or in person if you have no attorney, before
the (Registrar or Officer), at the Court-house, on
the _____ day of _____ 191 , at _____ of
the clock in the _____ noon being the time appointed for
adjudicating on the claim.

Dated _____ day of _____ 191 .

To (Name of claimant).

Registrar or Officer

* Usually three weeks after the expiration of the time for sending the
particulars; but a prolonged time will be fixed where necessary.

App. I.
rns 4, 5.

FORM No. 4.

(Chapter XXVI, rules 63, 64.)

(Formal parts as in No. 1, ante.)

Notice to
claimant to
produce docu-
ments.

You are hereby required to produce, in support of the claims sent in by you, against the estate of A. B., deceased [or your claim as heir-at-law or next-of-kin or one of the kindred of A. B., deceased, or your claim as (devisee or) legatee under the will of A. B., deceased] (*describe the documents required to be produced*) before the Registrar or Officer at the Court-house on the day of 191 , at of the clock in the noon.

Dated this day of 191 .

To (Name of claimant).

Registrar or Officer.

FORM No. 5.

(Chapter XXVI. rule 67.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

(Number and title of the suit.)

Executor's or
Administrator's affidavit
as to claims
of creditors
sent in to the
Registrar
pursuant to
advertis-
ment to
creditors.

I, C. D. of etc., the abovenamed plaintiff (or defendant, or as may be), the Executor (or Administrator) of A. B., late deceased, make oath and say as follows:—

1. I have in the paper writing now produced, and shown to me, and marked A, set forth a list of all the claims, the particulars of which have been sent in to the Registrar by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of 191 .

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A, and I have compared the same with the

books, accounts, and documents of the said A. B. (or as may be, and state any other inquiries or investigations made), in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination (and state any other reasons) I am of opinion and verily believe that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A, and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A, and that the same ought not to be allowed without proof by the respective claimants (or, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A, or whether such claims, or any parts thereof, are proper to be allowed without further evidence).

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information and belief, any other claims against the estate of the said A. B.

FORM No. 6.

(Chapter XXVI, rule 67.)

Exhibit referred to in Affidavit (No. 5).

(Short title.)

List of claims, the particulars of which have been sent in by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated _____ day of _____ 191 .

List of claims
of creditors
referred to in
the Executor's
or Adminis-
trator's affi-
davit.

This paper writing, marked A, was produced and shown to _____, and is the same as is referred to in his affidavit sworn before me this _____ day of _____ 191 .

W. B., etc.

L.
C.

First part—Claims proper to be allowed without further evidence.

Serial No.	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.	Amount proper to be allowed.

Second part—Claims which ought to be proved by the claimants.

Serial No.	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.

FORM No. 7.

(Chapter XXVI, rule 73.)

(Formal parts as in No. 1, *ante*.)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of Rs. _____, with interest thereon at _____ per cent. per annum from the _____ day of _____ 191____, and Rs. _____ for costs (or with costs to be taxed by the Taxing Officer). If part only has been allowed, add: If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit (continue as in No. 3, *ante*).

Notice to
creditor of
allowance of
claim or part
of claim and
to prove
residue.

Dated _____ day of _____ 191____

To (Name of claimant).

Registrar or Officer.

FORM No. 8.

(Chapter XXVI, rule 73.)

(Formal parts as in No. 1, *ante*.)

List of claims against the estate of A. B., deceased, which have been allowed without proof.

Names of claimants.	AMOUNT ALLOWED.			Advertisements of allowance of claims.
	Principal.	Interests.	Costs.	
A. B.	Rs. _____	Rs. _____, at _____ per cent., up to the _____ day of _____ and subsequent interest, at 6 per cent.	Rs. _____ (or to be taxed).	

Dated _____ day of _____ 191____.

By order,

Registrar or Officer.

APPENDIX J.

(Chapter XXVII, rule 65.)

FORM No. 1.

CONDITIONS OF SALE OF THE PROPERTY DESCRIBED IN THE
NOTIFICATION OF SALE IN SUIT No. . OF 19 .Ordinary
conditions
of sale of
immoveable
property.

1. No person shall advance a less sum than Rs. , or retract a bidding.

2. The sale is subject to a reserved bidding which has been fixed by the Registrar.

3. The highest bidder shall be the purchaser, provided the Registrar shall consider that a sufficient bid has been offered, and where any dispute arises as to the last or highest bidding for any lot, the same shall be put up again at a former bidding for sale.

4. The purchaser shall, at the time of sale, subscribe his name and address to his bidding, and the abstract of title and all written notices and communications and summonses shall be deemed duly delivered to and served upon the purchaser, by being left for him at such address, unless or until he is represented by an attorney.

5. The purchaser shall, at the time of sale, pay a deposit of twenty-five per cent. on the amount of his purchase-money to the Registrar, otherwise the lot shall immediately be again put up for sale.

6. The Registrar shall, as soon as possible after the sale, proceed to certify the result, and such certificate shall, within eight days after the sale, be filed by, and at the expense of, the party having the carriage of the proceedings, and in case of his neglect the purchaser of any lot shall be at liberty to file the same, and to retain the costs out of the purchase-money.

7. The party having the carriage of the proceedings shall, within days after such certificate has become binding, deliver to the purchaser, or his attorney, an abstract of the title to the lot purchased by him, subject to the stipulations contained in these conditions; and the purchaser shall, within days after the actual delivery of the abstract, deliver at the office of Mr. A. B., the attorney of (the party having the carriage of the proceedings) at No.

Street in the town of Calcutta, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and to and in respect of the description of the property, and upon the

expiration of such last-mentioned time (and in this respect time is to be deemed of the essence of the contract) the title shall be considered as approved of and accepted by the purchaser, subject only to such objections and requisitions, if any.

8. The purchaser shall, under an order for that purpose to be obtained by him, or in case of his neglect, by the party having the carriage of the proceedings, at the cost of the purchaser, upon application to a Judge in Chambers, pay the amount of his purchase-money (after deducting the amount paid as a deposit) to the Comptroller-General of Accounts for the time being of the Government of India, and the Secretary and Treasurer for the time being of the Bank of Bengal, with the privy of the Accountant-General of this Court, to the credit of the Suit No. of 19 (wherein A. B. is plaintiff and C. D. is defendant), within forty days (*or such further time as may be allowed by a Judge*) from the day of sale; and where the same is not so paid, then the purchaser shall pay interest on his purchase-money at the rate of per cent. per annum from the end of forty days (*or such further time as may be allowed by a Judge*) from the day of sale to the day on which the same is actually paid.

9. Upon payment of the purchase-money in manner aforesaid, the purchaser shall be entitled to possession of such parts of the property as are in hand, and to the rents and profits of such parts as are let as from the day of such payment, and shall be entitled to a proper conveyance, wherein all proper parties shall join as the Registrar shall direct. Such conveyance shall be prepared by, and registered at the expense of, the purchaser, and shall be tendered and left by him at the office of the said Mr. A. B., for execution by the proper parties.

The purchaser shall at his own expense take such steps as may be necessary for the purpose of taking possession.

10. The purchaser shall not be liable to pay the outgoings previous to the day of payment of the purchase-money and the rents and outgoings shall be apportioned, where necessary.

11. The production and inspection of all deeds, evidences and muniments of title which are not in the possession or power of the party having the carriage of the proceedings, and the procuring and making of all certificates, attested or other copies or extracts of or from any registers, deeds, wills, or other documents, and of all declarations or other evidences as to identity, whether required for the verification of the abstract or for any other purpose, shall be at the expense of the purchaser requiring the same.

12. Where any error or mis-statement shall appear to have been made in the particulars or description of the property, such error or mis-statement, where capable of compensation,

App. 1.

1, 2.

shall not annul the sale nor entitle the purchaser to be discharged from his purchase, but a compensation shall be made to or by the purchaser as the case may be, and the amount of such compensation shall be settled by a Judge in Chambers.

13. Where the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by a Judge in Chambers for the re-sale of the property and for payment by the purchaser of the amount of the deficiency, if any, in the price which may be obtained upon such re-sale, and of all attorney-and-client's costs and expenses occasioned by such default.

14. Where a re-sale is directed, if for want of bidders the property cannot be re-sold, the purchaser at the former sale shall pay the whole amount of his purchase-money into Court; but where the property be re-sold, and where the price obtained at the re-sale be less than the purchase-money payable by the original purchaser, he shall pay the amount of the deficiency. The costs occasioned by the default of the original purchaser shall also be paid by him. An order containing these directions may also be obtained from a Judge in Chambers.

FORM No. 2.

CONDITIONS OF SALE OF THE PROPERTY DESCRIBED IN THE NOTIFICATION OF SALE IN SUIT No. OF .

Ordinary
conditions of
sale of
moveable
property,
other than
negotiable
securities, or
shares in any
railway,
banking, or
other public
company or
corporation.

1. No person shall retract a bidding.

2. The highest bidder shall be the purchaser, provided the Registrar shall consider that a sufficient bid has been offered, and where any dispute arises as to the last or highest bidding for any lot, the property shall be put up again at a former bidding for re-sale.

3. The purchaser shall, at the time of sale, pay the full amount of the purchase-money, otherwise the property shall be again immediately put up for re-sale.

4. Upon payment of the purchase-money, the purchaser shall be entitled to obtain immediate possession of the property.

5. The Registrar shall, as soon as possible after the sale, proceed to certify the result. Such certificate shall be filed by, and at the expense of, the party having the carriage of the proceedings.

FORM No. 3.

Form of bidding paper.

Bidding paper marked B, referred to in my certificate made in the Suit No. of and dated the day of one thousand nine hundred and

Registrar.

We, whose names are hereunder subscribed, respectively, bid at the sale by auction in the above suit on the day of one thousand nine hundred and , the sums set opposite to our respective names, for, and became the purchasers of, the respective lots specified in the notification of such sale, the numbers of which are set opposite to our respective names, subject to the conditions produced at such sale:—

No. of lot.	Amount of highest bidding.	Amount of deposit received.	Amount remaining due.	Signature of the purchaser.	Purchaser's address and quality.

FORM No. 4.

SUIT No. OF 19 .

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

Whereas by a decree (or order) of this Honourable Court made in the above suit, and dated the day of one thousand nine hundred and

Form of
certificate of
result of
sale.

, it was ordered that the premises comprised in the mortgage therein referred to should be sold by the Registrar to the best purchaser or purchasers that could be got for the same, provided the Registrar should consider that a sufficient sum had been offered, and that all proper parties should join in the conveyance as the Registrar should direct, and that the conveyance should be settled by the Registrar where the parties differ about the same, I do hereby certify as follows:—

1. I certify that I did this day, in my sale room, subject to the conditions specified in the conditions of sale hereunto annexed, and marked with the letter A, put up for sale by auction the said premises described in the notification of such sale (a copy of which is hereunto annexed, and marked with the letter B), and that the result of such sale is truly set forth in the bidding paper hereunto annexed and marked with the letter C.

2. I further certify that the sums set forth in the second column of the said bidding paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and that the persons whose names are subscribed in the fifth column of the said bidding paper as purchasers were respectively the highest bidders for, and became the purchasers of, the said respective lots, at the prices or sums set opposite to their respective names in the said second column thereof.

3. I further certify that I have received the sums set forth in the third column of the said bidding paper as deposits from the said respective purchasers in respect of their respective purchase-monies set forth in the said second column of the said bidding paper, leaving due in respect of the said purchase-monies the respective sums set forth in the fourth column of the said bidding paper.

4. I further certify that the several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words “not sold,” were not sold, no person having bid a sufficient sum for the same.

5. I further certify that no person bid any sum whatever for the several lots opposite the numbers of which I have in the second column of the said bidding paper written the words “no bidding.”

Dated this day of in the year
of our Lord one thousand nine hundred and .

Registrar.

FORM No. 5.

(Chapter XXVIII, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

To B.

Whereas A has, under section 83 of Act IV of 1882, deposited in Court Rs. 1,00,000 as the amount remaining due on the mortgage to you, dated the day of 19 , and Rs. 106 for the commission and charges of the Accountant-General and the Bank of Bengal, and Rs. 500 to provide for such necessary costs and expenses as you may incur, and whereas it is alleged that a sufficient tender was previously made to you: You are hereby informed that the Court, upon being satisfied that you have transferred the property comprised in the said mortgage and (*where B is in possession*) delivered up possession thereof to the said A, and have also delivered up to the said A, or deposited in Court, or accounted for, all documents in your possession or power, or for which you are responsible relating to the said property, the Court will make such order as to it shall seem fit for the payment to you of the said sum of Rs. 1,00,000 (less, where a tender was made, the commission and charges of the Accountant-General and the Bank of Bengal) with all costs and expenses to which you may be entitled.

Notice under
section 83 of
the Transfer
of Property
Act.

Dated this day of 19 .

Registrar.

FORM No. 6.

(Chapter XXX, rule 7.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CIVIL JURISDICTION.

In the matter of Act VIII of 1890
and

In the matter of a minor.

Notice is hereby given that
residing at

Notice of
application.

and natural guardian
of the abovenamed minor, has presented a petition to this

App. J.
Form 6.
App. K.
Form 1.

Court praying to be appointed the guardian of the person and property of the said minor and that this Court has fixed the day of for the hearing of the said petition.

Dated this day of 19 .

Attorney.

Registrar.

APPENDIX K.

FORM No. 1.

(Chapter XXXI, rule 6.)

(For general heading, see rule 1.)

Order.

Upon the application of the petitioner by summons, dated and upon hearing the attorneys for the petitioners, and on reading the petition on the day of presented to the High Court of Judicature at Fort William in Bengal. It is ordered, that an enquiry be made as to what are the debts, claims and liabilities of or affecting the said company on the day of 19 , and that notice of the presentation of the said petition be inserted in () on the day of and () and that a list of the persons who are creditors of the company on the said day of together with their addresses and the amounts due to them respectively and the affidavit verifying the same be filed in the office of the Registrar of the said High Court on or before the day of And it is further ordered that any creditor whose name does not appear in such list or who claims to be a creditor for a larger amount than that for which he is entered in such list shall on or before the day of send in his name and address and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company And it is further ordered that notice of the day so fixed as last aforementioned shall be given in writing by registered post to every creditor whose name appears in such list and such notice shall be inserted in on the day of and in on the day of And it is further ordered that the attorney of the company and some competent officer or officers of the company do on or before the day of make and file an affidavit stating the result of such notices and verifying the names and addresses of the persons (if any) who shall have sent in particulars of their debts and claims in pursuance of such notices respectively and the amounts of such debts or

claims distinguishing which if any of such debts or claims are wholly or as to any and what part thereof admitted by the company and which (if any) of such debts and claims are wholly or as to any and what part thereof admitted by the company.

FORM No. 2.

(Chapter XXXI, rule 7.)

(For general heading, see rule 1.)

Notice is hereby given that a petition for confirming a resolution reducing the share capital of the above company from rupees to rupees was on the day of presented to the High Court of Judicature at Fort William in Bengal and is now pending; and that the list of creditors of the company is to be made out as for the day of 19 .

Notice of
advertis-
ment of
petition.

C. and D., attorneys to the company.

FORM No. 3.

(Chapter XXXI, rule 9.)

(For general heading, see rule 1.)

I, A. B., of etc., make oath or solemn affirmation and say as follows:—

1. The paper-writing, hereto annexed and marked with the letter A, contains a list of the creditors of and persons having claims upon the said company on the day of 19 (the date fixed by order in this matter dated) together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

Affidavit
verifying list
of creditors

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company.

(Usual Jurat.)

App. K.
Form 3, 4.

List of creditors referred to in the last form.

Exhibit A referred to in the annexed affidavit of
sworn [or solemnly affirmed] this day of
19 . Before me

Commissioner.

In the matter, etc.

Names, addresses and descriptions of the creditors.	Nature of debt or claim.	Amount of debt or claim.

FORM NO. 4.

(Chapter XXXI, rule 11.)

(For general heading, see rule 1.)

To

Notice to
creditor.

You are requested to take notice that a petition has been presented to the Court of , to confirm a special resolution of the above company for reducing its share capital from rupees to rupees , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor (*here state the amount of the debt or nature of the claim*).

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above you must on or before the day of send the particulars of your claim and the name and address of your attorney (if any) to the undersigned at . In default of your so doing the above entry in the list of creditors

will, in all proceedings under the above application to reduce the share capital of the company, be treated as correct.

Dated the day of 19 .

A. B.,

Attorney of the said company.

FORM No. 5.

(Chapter XXXI, rule 12.)

(For general heading, see rule 1.)

Notice is hereby given that a petition has been presented to the High Court of Judicature at Fort William in Bengal for confirming a resolution of the above company for reducing its share capital from rupees to rupees . A list of the persons admitted to have been creditors of the company on the day of 19 may be inspected at the offices of the company at or at the office of at any time during usual business hours on payment of the charge of Re. 1.

Notice of
advertisement of
list of creditors.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his attorneys (if any) to the undersigned at or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of 19

A. B.,

Attorney for the said company.

FORM No. 6.

(Chapter XXXI, rule 13.)

(For general heading, see rule 1.)

We, C. D. of etc., (the secretary or agent of the said company) E. F. of etc., (the attorney of the said company) and Affidavit of list of

App. K.
Form G.

persons who
have sent
in claims.

A. B. of etc., (the managing director of the said company), severally make oath or solemn affirmation and say as follows:—

I, the said C. D., for myself say as follows:—

1. I did, on the day of 19 in the manner hereinafter mentioned serve a true copy of the notice, hereto annexed and marked B, upon each of the respective persons whose names and addresses and descriptions appear in the first column of the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

2. I served the said notice upon the persons respectively mentioned in the said list (being the last known addresses or places of abode of such persons respectively) by sending on the day of by registered post copies of such notice to the respective addresses appearing in such list. And I, the said E. F., for myself, say as follows:—

3. A true copy of the notice, hereto annexed and marked C, has appeared in the of the 19 , the of the day of 19 , etc.

4. I have, in the paper-writing hereto annexed and marked D, set forth a list of all claims the particulars of which have been sent in to me pursuant to the said notice B by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

5. I have, in the paper-writing hereto annexed and marked E, set forth a list of all claims the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of 19 , not appearing on the said list of creditors, marked A, and who claimed to be entered thereon.

And we, C. D. and A. B., for our ourselves say as follows:—

6. We have, in the first part of the said paper-writing, hereto annexed and marked D, and also in the first part of the said paper-writing hereto annexed and marked E, respectively, set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims, respectively, as are not wholly admitted.

7. We have, in the second part of each of the said paper-writings, marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct.

(Usual Jurat.)

Exhibit D referred to in the annexed affidavit of C. D., E. F., and A. B. sworn [or affirmed] this day of 19 , before me.

Commissioner.

In the matter, etc.

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said company for *larger amounts* than are stated in list of creditors made out by the company.

First part.

Debts and claims wholly or partly admitted by the company.

Names, addresses and description of creditors.	Particulars of debt or claim.	Amount claimed.	Amount admitted by the company to be owing to creditors.	Debts proposed to be set apart and appropriated in full although disputed.

App. 3E.
Form 6.

Second part.

Debts and claims wholly disputed by the company.

Names, addresses and description of claimants.	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

*Exhibit E referred to in the annexed affidavit of C. D.,
E. F., and A. B. respectively sworn [or affirmed] this
day of 19 , before me.*

Commissioner.

E

In the matter, etc.

List of debts and claims of which the particulars have been
sent in to by persons claiming to be creditors
of the company and to be entered on the list of the creditors
made out by the company.

First part.

(Same as in Exhibit D.)

Second part.

(Same as in Exhibit D.)

NOTE.—The names are to be inserted alphabetically.

FORM No. 7.

(Chapter XXXI, rule 14.)

(For general heading, see rule 1.)

To

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit, and giving notice thereof to _____, the attorney of the company, on or before the _____ day of _____ next; and you are to attend in person or by your attorney at the Chambers of the Honourable _____ at the High Court on the _____ day of _____ 19____ at _____ o'clock in the _____ noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions you will (be precluded from objecting to the proposed reduction of the capital of the company), (or in all proceedings relative to the proposed reduction of the share capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated this _____ day of _____ 19____.

A. B.,

Attorney for the said company.

FORM No. 8.

(Chapter XXXI, rule 18.)

(For general heading, see rule 1.)

Notice is hereby given that a petition presented to the Honourable _____ on the _____ day of _____, for confirming a resolution reducing the share capital of the above company from Rs. _____ to Rs. _____, is directed to be heard before the Honourable _____ on the _____ day of _____ 19____.

A. B.,

Attorneys for the company.

App. K.
9-11.

FORM No. 9.

(Chapter XXXI, rule 24.)

(For general heading, see rule 1.)

Advertise-
ment of
petition to
wind up.

Notice is hereby given that a petition for the winding up of the abovenamed company by the (or subject to the supervision of the) High Court of Judicature at Fort William in Bengal (or District Court of) was on the day of 19 presented to by the said company (or C. D. of , a creditor or contributory of the said company *or as the case may be*). And that the said petition is directed to be heard before on the day of 19 ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding up of the said company under the above Act should appear at the time of hearing by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

A. B.,

Attorneys for the petitioners.

FORM No. 10.

(Chapter XXXI, rule 26.)

(For general heading, see rule 1.)

Affidavit
verifying
petition.

I, A. B., of etc., make oath (or do solemnly affirm) and say that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

(Usual Jurat).

FORM No. 11.

(Chapter XXXI, rule 29.)

(For general heading, see rule 1.)

Order for
winding
up by the
Court.

Upon the petition of the abovenamed company, or A. B. of etc., a creditor (or contributory of the abovenamed company) filed on the day of 19 presented

unto the said Court, and upon hearing Counsel for the petitioner, and for and upon reading the said petition, an affidavit of the said petitioner filed, etc., verifying the said petition, an affidavit of S. M. filed the day of 19 the *Gazette of India* of the day the *Calcutta Gazette* of the day of (enter any other paper) each containing an advertisement of the said petition (enter any other evidence) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1913.

FORM No. 12.

(Chapter XXXI, rule 29.)

(For general heading, see rule 1.)

Upon the petition, etc., this Court doth order that the voluntary winding up of the said company be continued, but subject to the supervision of the Court; and any of the proceedings under the said voluntary winding up may be adopted as this Court shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to a Judge of this Court at Chambers as there may be occasion.

Order for
winding up
subject to
supervision**FORM No. 13.**

(Chapter XXXI, rule 29.)

(For general heading, see rule 1.)

By an order made by the High Court of Judicature at Fort William in Bengal (or District Court of) in the above matter dated the day of 19 , on the petition of the abovenamed company (or A. B. of): it was ordered that, etc., as in order.

Advertisement
of time and
order to
wind up.

C. and D.,

*Attorneys for the said petitioner.***FORM No. 14.**

(Chapter XXXI, rule 32.)

(For general heading, see rule 1.)

Notice is hereby given that the Honourable Mr. Justice (or the Judge of the District Court of) has fixed the day of 19 at o'clock in place fixed

Advertisement
of time and
place fixed

**for the
appointment
of official
liquidator.**

(or as the case may be).

Proposals for appointment of official liquidator and sureties where Form No. 14 has been issued.

Name.	Address.	Number of shares held.

FORM No. 16.

(Chapter XXXI, rule 33.)

(For general heading, see Rule 1.)

The Honourable Mr. Justice (or the Judge of the District Court) has approved of and allowed this recognizance / G. H. (Registrar or as the case may be). official liquidator and sureties.

R. P. H. of etc., W. B. of etc., and T. P. of etc., before the High Court of Judicature at Fort William in Bengal (or District Court of) personally appearing, do acknowledge themselves, and every of them doth acknowledge himself to owe to the Registrar of the said High Court the respective sums of money set opposite to their respective names in the schedule hereto to be paid to the said Registrar or the Registrar of the said Court for the time being (or to Esquire, Judge of the said District Court of), his successors in office or assigns; and in default of payment of the said respective sums, the R. P. H., W. B. and T. P. are willing and do agree for himself, his heirs, executors and administrators, by these presents, that the said respective sums shall be levied, recovered and received of and from them and every of them, and of and from all and singular the moveable and immoveable property of them and each of them wheresoever the same shall be found. Dated the day of 19/ .

Whereas in the matter of, etc. (take title from order to wind up), the High Court of Judicature at Fort William in Bengal, (or District Court of the) has by an order dated the day of 19/ , appointed the said R. P. H. official liquidator of the said company, and has thereby directed him to give security to be approved of by the Registrar of the said Court, or (in case the security precedes the order appointing) has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said company (upon his giving security) And whereas the said Registrar of the said Court has approved the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule hereto and has also approved of the above-written recognizance with the under-written condition as a proper security to be entered into by the said R. P. H., W. B. and T. P., pursuant to the said order (or pursuant to the general order of the said Court in that behalf) and in testimony of such approbation the said Registrar (or in a District Court) , Esq., (the Judge of the said Court), has signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such that if the said R. P. H., his executors or administrators or any of them do and shall duly account for what the said R. P. H. shall receive, or become liable to pay as official liquidator of

App. B.
Forms 16-18.

the said company at such periods and in such manner as the said Court shall appoint, and do and shall pay the same as the said Court hath (by the said order) directed or shall hereafter direct. Then the above recognizance to be void otherwise to remain in full force and virtue.

The Schedule above referred to.

R. P. H.	.	.	.	.	thousand rupees.
W. B.	.	.	.	.	thousand rupees.
T. P.	.	.	.	.	thousand rupees.

Taken and acknowledged by the abovenamed R. P. H., etc., etc.

FORM No. 17.

(Chapter XXXI, rule 33.)

(For general heading, see rule 1.)

Affidavit
of sureties

We, W. B. of etc., and T. P. of etc., severally make oath (or solemnly affirm) and say as follows:—

1. I, the said W. B. for myself, say that I am worth the sum of rupees of lawful money of British India, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P. for myself, say that I am worth the sum of rupees of etc. (*as above*).

(Usual Jurat).

FORM No. 18.

(Chapter XXXI, rule 34.)

(For general heading, see rule 1.)

The day of 19 .

Order
appointing
an official
liquidator.

Upon the application, etc., and upon reading, etc., the Court doth hereby appoint R. P. H. of etc., official liquidator of the abovenamed company (*If security has not been given add, and it is ordered that the said R. P. H. do on or before the day of next give security to be approved of by the Court*) And it is ordered that the said R. P. H. on the day of and day of 19 and the same days in each succeeding year file his accounts in the office of the Registrar of the said Court (*or in the case of a District Court in the District Court at*) and it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of Bengal (or the branch nearest to the

Court in which the matter is pending, or in the case of a District Court into the District Court at) to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. (*In case two or more official liquidators are appointed add*) And the said Court doth declare that the following acts required or authorised by the above Act to be done by the official liquidators may be done by either (or any one, or two) of the official liquidators hereby appointed, that is to say (describe the acts), and all other acts so required or authorised to be done by both (or all) the official liquidators hereby appointed.

FORM No. 19.

(Chapter XXXI, rule 37.)

(*For general heading, see rule 1.*)

The Honourable Mr. Justice (or the District Judge of) has, by an order dated the day of 19 , appointed R. P. H. of to be official liquidator of the abovenamed company. Advertisse-
ment of
appointment
of official
liquidator.

Dated this day of 19 .

FORM No. 20.

(Chapter XXXI, rule 38.)

(*For general heading, see rule 1.*)

The day of 19 .

Upon the application, etc., and upon reading, etc., the Court doth hereby appoint R. P. H. of etc., provisionally, official liquidator of the abovenamed company. (*If security is dispensed with add, without security; or if security is to be given add direction as to security account and payment into the Bank as in form No. 18*) and the said Court doth hereby limit and restrict the powers of the said R. P. H. as such provisional official liquidator to the following acts, that is to say (*describe the acts which the provisional official liquidator is to be authorised to do*). Order
appointing
a provisional
official
liquidator.

FORM No. 21.

(Chapter XXXI, rule 44.)

(*For general heading, see rule 1.*)

The creditors of the abovenamed company are required on or before the day of 19 to send their names and addresses and the particulars of their debts Advertisse-
ment for
creditors.

App. K.
Forms 21, 22.

or claims, and the names and addresses of their attorneys (if any) to R. P. H. of _____, the official liquidator of the said company, and if so required by notice in writing from the official liquidator, are in person or by their attorneys to come in and prove their said debts or claims at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts _____ proved.

The _____ day of _____ 19, at _____ o'clock in the _____ noon, at the said _____, is appointed for hearing and adjudicating upon the debts and claims.

Dated this _____ day of _____ 19

G. H.

FORM No. 22.

(Chapter XXXI, rule 46.)

(For general heading, see rule 1.)

Affidavit of
official
liquidator
as to debts
and claims.

I, R. P. H. of etc., the official liquidator of the above-named company, make oath (or solemnly affirm) and say as follows:—

1. I have, in the paper-writing hereto annexed and marked with the letter A, set forth a list of all the debts and claims, the particulars of which have been sent in to me by persons making claim upon or claiming to be the creditors of the said company, pursuant to the advertisement issued in that behalf, dated the _____ day of _____ 19, and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence, and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims; and I believe that such amounts, respectively, are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

Second part.*Debts and claims which ought to be proved by the creditors.*

Serial number.	Number of creditors.	Address and description.	Particulars of debts or claim.	Amount claimed.
				Rs. As. P.

FORM No. 24.

(Chapter XXXI, rule 47.)

(For general heading, see rule 1.)

(Place and date.)

SIR,

Notice to
creditors
of allowance
of debt.

The debt claimed by you in this matter has been allowed by the Judge at the sum of Rs. *(if part only allowed add)* if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, etc. *[as in the next form]*.

I am, etc.,

R. P. H.,
Official Liquidator.

To MR. P. R.

FORM No. 25.

(Chapter XXXI, rule 48.)

(For general heading, see rule 1.)

(Place and date.)

SIR,

You are hereby required to come in and prove the debt claimed by you against the abovenamed company, by filing your affidavit, and giving notice thereof to me on or before the day of next, and you are to attend in person or by your attorney (or vakil) on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Notice to
creditors to
come in and
prove their
debts.

Dated this day of 19 .

R. P. H.,
Official Liquidator.

To MR. P. R.

FORM No. 26.

(Chapter XXXI, rule 48.)

(For general heading, see rule 1.)

I, S. T. of etc., make oath (or solemnly affirm) and say as follows:—

Affidavit of
creditor in
proof of
debt.

1. The abovenamed company was on the day of 19 , the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of rupees for, etc. *(Describe shortly the nature of the debt and exhibit any security for it; and in case of a trade debt exhibit vouchers, and verify the reasonableness of the charges, as in proving a debt in a suit).*

2. I have not, nor hath nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of rupees or any part thereof, or any security or satisfaction for the same or any part thereof. *(If any security add)* except the said *(describe the security)* hereinbefore mentioned or referred to. Sworn (or solemnly affirmed, etc.).

Form No. 27.

(Chapter XXXI, rule 52.)

*(For general heading, see rule 1.)*Settlement
by the Judge
of debts and
claims.

The debts and claims which have been allowed are set forth in the first schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to Rs.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry, down to (the present) date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been brought in by the persons therein named and have been disallowed.

*(The first schedule above referred to.)***First part.***Debts and claims which carry interest.*

Number.	Names of creditors.	Addresses and description.	Particulars of debt.	Total amount.
1	J. L.	Of (address) Principal Interest at per cent. per annum from to the date of this certificate. Cost of proof.	On bills of exchange dated, etc. Rs. Rs.	Ra. As. P.

Second part.*Debts and claims which do not carry interest.*

Number.	Names of creditors.	Addresses and descriptions.	Particulars of debts.	Interest on principal.	Total due.
			Rs. As. P.	Rs. As. P.	Rs. As. P.
			(Goods sold —		
40	W. R.	Of (address)	50 0 0		
		Principal	2 0 0		
		Costs of proof.	Total Rs.	2 0 0	
			Add—Total		51 0 0
			First part		
			Total, first and second part.		

The second schedule above referred to.

Number.	Names of creditors.	Addresses and descriptions.	Particulars of claims.	Amount claimed.

Dated this day of 19 .

(Signature of the Judge or District Judge.)

App. H.
Forms 28, 29.

FORM No. 28.

(Chapter XXXI, rule 52.)

(For general heading, see rule 1.)

SIR,

Notice to
creditor to
attend to
receive debt.

Upon application at my office, No. , Street, Calcutta,
on or after the instant, between the hours of ten and
four o'clock you may receive a cheque for the amount of your
debt allowed in this matter as under :—

Rs.

Principal .

Interest .

Costs of proof .

TOTAL

If you cannot attend personally, the cheque will be delivered
to your order, upon your filling up and signing the subjoined
form.

The bills or securities (if any) held by you must be produced
at the time of such application.

Dated this day of 19 .

R. P. H.,
Official Liquidator.

SIR,

Please to deliver to W. R. the cheque for Rs.
referred to in the above letter as payable to me.

S. T.,
Creditor.

To Mr. R. P. H.,
Official Liquidator of the Company.

FORM No. 29.

(Chapter XXXI, rule 53.)

(For general heading, see rule 1.)

Affidavit in
support of
list of con-
tributories.

I, R. P. H. of etc., the Official Liquidator of the above-
named Company, make oath and say (or solemnly affirm) as
follows :—

1. The paper-writing now produced and shown to me, and
marked with the letter A, contains a list of the contributories
of the said Company, made out by me from the books and
papers of the said company, together with their respective

App. H.
Forms 30-32.

Second part.

Contributories as being representative of, or liable for the debts of, others.

Serial No.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

FORM No. 31.

(Chapter XXXI, rule 53.)

(For general heading, see rule 1.)

Order on
application
to vary list.

Upon the application of W. N. to review the list of contributories of the said company in respect of the inclusion of the said W. N. therein and that his name may be excluded therefrom and upon hearing Advocates etc., and upon reading etc. It is ordered that the name of the said W. N. be excluded from the said list of contributories for the Court doth not think fit to make any order on the said application except that the said W. N. do pay to R. P. H., the official liquidator of the said company his costs of this application to be taxed by the Taxing Officer in case the parties differ (or in the case of a District Court the sum of Rs.) for his costs of this application.

FORM No. 32.

(Chapter XXXI, rule 54.)

(For general heading, see rule 1.)

Notice to
contribu-
tories of
appointment
to settle list
of contribu-
tories.

The Honourable Mr. Justice (or as the case may be) has appointed the day of 19 , at of the o'clock in the noon at , to settle the list of the contributories of the above-named Company, made out and filed in Court by the official liquidator of the said Company, and you are included in such list in the character, and for the number of shares or extent of

interest stated below, and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said Judge, including you therein.

Dated this day of 19 .

R. P. H.,
Official Liquidator.

To Mr. A. B., and to Mr. C. D. his attorney.

Number on list.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

FORM No. 33.

(Chapter XXXI, rule 54.)

(For general heading, see rule 1.)

I, W. S., of etc., clerk to Messrs. C. and D. of etc., the Affidavit of attorneys of the Official Liquidator of the abovenamed Com- service of pany, make oath (or solemnly affirm) and say as follows:— notice.

1. The first six columns of the schedule hereto annexed, and marked with the letter A, contain a true copy of the list of contributories of the said Company, made out and filed in Court by the said Official Liquidator, on the day of 19 , and now on the file of proceedings of the said Company, as I know from having, on the day of 19 , examined and compared the said schedule with the said list; and I have in the seventh column of the said schedule, marked A, set forth the names and addresses of the attorneys who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice hereto annexed and marked B, upon each of the said respective persons whose names, addresses, and descriptions appear in the second, third and fourth columns of the said

schedule, marked A, except that in the tabular form at the foot of such copies respectively, I inserted the number of list, name, address, description, in what character included, and number of shares or extent of interest of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule, marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their attorneys, according to their respective names and addresses appearing in the said schedule and marked A, and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving house No. _____, Street, in Calcutta (*or as the case may be*) between the hours of _____ and _____ o'clock in the _____ noon of the said day of _____ 19 _____.

Sworn (or solemnly affirmed) etc.

(Chapter XXXI, rule 54.)

(For general heading, see rule 1.)

Schedule A referred to in the annexed affidavit of W. S.
sworn (or solemnly affirmed) before me this day of
19 .

**W. B.,
etc.**

No. on list.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).	Names and addresses of attorneys who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S. to which this schedule is an exhibit.
1	2	3	4	5	6	7

FORM No. 35.

(Chapter XXXI, rule 54.)

(For general heading, see rule 1.)

I, R. P. H. of etc., the official liquidator of the abovenamed company make oath (or solemnly affirm) and say as follows:—

1. Since filing in Court the list of the contributories in this matter on the day of 19 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories hereto annexed and marked with the letter B, are or have been holders of shares (or members) of the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list, marked B, contains the names of such persons, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each; and such list is, to the best of my knowledge, information and belief, true and accurate.

3. I have, in the first part of the said list, marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list, marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable for the debts of, others. Sworn (or solemnly affirmed), etc.

FORM No. 36.

(Chapter XXXI, rule 54.)

B.

(For general heading, see rule 1.)

Exhibit B referred to in the annexed affidavit of Supplemental R. P. H. sworn (or solemn affirmation made) before me, this list of contributories referred to in Form No. 35.

day of 19 .

W. B.,

etc.

NOTE.—The supplemental list is to be made out in the same form as the original list. Form No. 30.

FORM No. 37.

(Chapter XXXI, rule 55.)

(For general heading, see rule 1.)

The result of the settlement of the list of the contributories of the abovenamed company, made out and filed in Court by Settlement by the Judge of the

App. K.
37.

**list of
contribu-
tories.**

**the official liquidator of the said company, on the day
of 19 , pursuant to the above Act and the
General Order of this Court in that behalf, so far as the said
list has been settled up to the date of this certificate, is as
follows:—**

1. The several persons, whose names are set forth in the second column of the first schedule hereto, have been included in the said list of contributories as contributories of the said company in respect of the number of shares (or extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the first list as are contributories in their own right. I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of; or being liable to the debts of, others.

2. The several persons whose names are set forth in the second column of the said schedule hereto have been excluded from the said list of contributors.

3. I have, in the seventh column of the said first and second schedules, set forth opposite the names of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

The first schedule above referred to.

First part.

Contributories in their own right.

Serial No. in list.	Name.	Address.	Description.	In what character included.	Number of shares or extent of interest.	Date when included in the list.

Second part.

Contributories as being representatives of, or liable for the debts of, others.

Serial No. in list.	Name.	Address.	Description.	In what character included.	Number of shares or extent of interest.	Date when included in the list.

The second schedule above referred to.

Serial No. in list.	Name.	Address.	Description.	In what character proposed to be included.	Number of shares or extent of interest.	Date when excluded from the list.

Dated this

day of

19 .

(Signature of the Judge or District Judge.)

(For general heading, see rule 1.)

To the Secretary and Treasurer of the Bank of Bengal (or the Agent of the branch of the Bank of Bengal at).

**Direction to
open account
at the
Bank of
Bengal.**

I am, Sir,

Your most obedient servant,

G. H.

Signature,

R. P. H.,

Official Liquidator.

G. W.

In the case of winding up proceedings being carried on in a District Court, the liquidator of the company should present a similar application to the Judge as the above, *mutatis mutandis* for leave to open such an account in the District Court.

FORM No. 39.

(Chapter XXXI, rule 57.)

(For general heading, see rule 1.)

Affidavit of official liquidator in support

I, R. P. H. of etc., the official liquidator of the abovenamed company make oath (or solemnly affirm) and say as follows:—

1. I have in a schedule hereto annexed and marked with the letter A, set forth a statement showing the amount due in

respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of Rs. or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of Rs. and no more. There are no other assets belonging to the said company, except the amounts due from certain of the said contributories of the said company, and to the best of my information and belief it will be impossible to realize in respect of the said amounts more than the sum of Rs. or thereabouts.

3. It appears by the certificate of the Honourable Mr. Justice (or as the case may be) dated the day of 19 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges and expenses of and incidental to the winding up the affairs thereof, I believe the sum of Rs. will be required, in addition to the amount of the assets of the said company mentioned in schedule A and the said sum of Rs.

5. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required, as before mentioned, it is necessary that a call of Rs. per share should be made.

Sworn (or solemnly affirmed), etc.

FORM No. 40.

(Chapter XXXI, rule 57.)

(For general heading, see rule 1.)

Let all parties concerned attend at on day the day of 19 at Summons for of intended call. clock in the noon, on the hearing of an application on the part of the official liquidator of the abovenamed company, that a call to the amount of Rs. per share may be made on all the contributories (or if upon any particular class specify the same) of the said company.

This summons was taken out by A. B. of attorney for the said official liquidator.

App. K.
Forms 40-43.

To Mr. C. D. of etc., a contributory of the said company proposed to be included in the said call.

FORM No. 41.

(Chapter XXXI, rule 57.)

(For general heading, see rule 1.)

Advertisement of intended call.

By direction of the Hon'ble Mr. Justice notice is hereby given that the said Judge has appointed the day of 19 , at o'clock in the noon, at to make a call on all the contributories of the said company, or *as the case may be*, and that the said call shall be for Rs. per share. All persons interested are entitled to attend at such day, hour, and place to offer objections to such call.

Dated this day of 19 .

FORM No. 42.

(Chapter XXXI, rule 58.)

(For general heading, see rule 1.)

General order for a call.

Upon the application of the official liquidator of the abovenamed company and upon reading two orders dated the day of 19 and the day of 19 the certificate of the dated the day of 19 an affidavit of the said official liquidator filed 19 and the exhibit marked A therein referred to and an affidavit of filed 19 It is ordered that a call of Rs. per share be made on all the contributories of the said company (or *as the case may be*). And it is ordered that each such contributory do, on or before the day of 19 pay into the Bank of Bengal (or the Branch of the Bank of Bengal or in the case of District Court into the District Court at) to the account of the official liquidator of the company the amount which will be due from him or her in respect of such call.

FORM No. 43.

(Chapter XXXI, rule 58.)

(For general heading, see rule 1.)

Notice to be served with the

The amount due from you, C. D., in respect of the call made by the above (or within) order is the sum of Rs.

, which sum is to be paid by you into the Bank of Bengal (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at

general
order for
a call.

,) to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent but this notice and copy of order must be produced at the Bank or to the Court upon such payment, and the Secretary and Treasurer [or the Agent] of the Bank or the Nazir [or other proper officer] of the said Court will, upon receiving the same, deliver to you a certificate of the payment in numbered , signed by the said Secretary and Treasurer [or Agent] or Judge. In order to prevent proceedings being taken against you for non-payment, you must immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me, as the official liquidator of the said company, at my office, No. Street, in Calcutta (or as the case may be).

Dated this day of 19 .

R. P. H.,

Official liquidator.

To Mr. A. B.

FORM No. 44.

(Chapter XXXI, rule 59.)

(For general heading, see rule 1.)

I, R. P. H. of etc., the official liquidator of the above-named company, make oath (or solemnly affirm) and say as follows:—

Affidavit in
support of
application
for order
for payment
of call due
from con-
tributory.

1. None of the contributories of the said company whose names are set forth in the schedule hereto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the calls of Rs. per share, in pursuance of the order of the Judge in that behalf.
Dated the day of 19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call. Sworn (or solemnly affirmed), etc.

The schedule above referred to.

Number of list.	Name.	Address.	Description.	In what character included.	Amount due.

Note.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos. 44 and 45) will be required.

FORM No. 45.

(Chapter XXXI, rule 59.)

(For general heading, see rule 1.)

**Order for
payment of
call due from
contri-
butory.**

Upon the application of the official liquidator of the abovenamed company, and upon reading the order dated the _____ day of _____ 19____ an affidavit of _____ filed the _____ day of _____ 19____ and an affidavit of the said official liquidator, filed the _____ day of _____ 19____ it is ordered that C. D. of etc. (or E. F. of etc. the legal personal representative of L. M. late of etc. deceased) one of the contributories of the said company (or *if against several contributories* the several persons named in the second column of the schedule to this order being respectively contributories of the said company) do on or before the _____ day of _____ or within four days after service of this order pay into the Bank of Bengal (or the Branch of the Bank of Bengal or in the case of a District Court into the District Court at _____) to the account of the official liquidator of the _____ company (or to A. B. the official liquidator of the said company at his office No. _____ Street in the _____) the sum of Rs. _____ (*If against legal personal representative, add out of the assets of the said L. M. deceased in his hands as*

such legal personal representative as aforesaid to be administered in a due course of administration if the said E. F. has in his hands so much to be administered or *if against several contributories* the several sums of money set opposite to their respective names in the sixth column of the schedule hereto) such sum (or sums) being the amount (or amounts) due from the said C. D. (or L. M.) or the said several persons respectively in respect of the call of Rs. per share made by the said order dated the day of 19 .

The schedule referred to in the foregoing order.

Number on list.	Name.	Address.	Description.	In what character included.	Amount due.

FORM No. 46.

(Chapter XXXI, rule 59.)

(For general heading, see rule 1.)

I, J. B. of etc., make oath (or solemnly affirm) and say as follows:—

1. I did, on the day of 19 , personally serve G. F., of in the of , etc., with an order made in this matter by , dated the day of 19 , and which is hereto annexed and marked A, by delivering to and leaving with the said G. F. at , in the , a true copy of the said order together with a translation thereof in the language, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

Sworn (or solemnly affirmed) etc.

Affidavit of
service of
order for
payment
of call.

**App. R.
Forms 47-49.**

Notice to be
endorsed on
or served
with every
order direct-
ing payment
of money
into the
Bank of
Bengal or
into Court.

Form No. 47.

(Chapter XXXI, rule 63.)

You can make the payment directed by the within (or above) order to the Bank of Bengal (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at _____,) in person, etc. (*as in the form No. 37*).

R. P. H.,
Official Liquidator.

Form No. 48.

(Chapter XXXI, rule 63.)

No. _____ day of _____ 19 _____

Certificate
of payment
of money
into the
Bank of
Bengal or
into Court.

I hereby certify that C. D. of etc. has this day paid into the Bank of Bengal [or into Court] the sum of _____, to be placed to the credit of the official liquidator of the _____ company, pursuant to an order dated the _____ day of _____ 19 _____.
For the Bank of Bengal, Rs. _____

H. M.,
Secretary and Treasurer.
or
Nazir, District Court.
(*As the case may be.*)

Form No. 49.

(Chapter XXXI, rule 64.)

(*For general heading, see rule 1.*)

Affidavit of
non-pay-
ment of
money
directed to be
paid into
the Bank
of Bengal
or into
Court.

I, R. P. H. of etc., the official liquidator of the above-named company, make oath and say or solemnly affirm as follows:—

(I) G. F., the person named in an order made in this matter by the Honourable Mr. Justice _____ (*or as the case may be*), dated the _____ day of _____ 19 _____, has not paid into the Bank of Bengal (*or in the case of a District Court into the District Court at _____*) to the account of the official liquidator of the _____ company, the whole or any part of the sum of Rs. _____ as by the said order directed.

Or, (in case of several parties):—

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have, respectively, been duly served with orders made in this matter by the Honourable Mr. Justice (or as the case may be) of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of Bengal (or in the case of a District Court into the District Court at) to the account of the official liquidator or the company, the whole or any part of the several sums of money set opposite to their respective names in the schedule hereunder written, as by the said order, respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained by inquiry at the said Bank (or at the said Court) that such payment (or payments) has (or have) not been made, and seen the certificate of payment in, numbered (or several certificates of payment in, the numbers whereof, respectively, are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates furnished by me to the Secretary and Treasurer of the said Bank (or Nazir of the said District Court at _____) for delivery to the said G. F. (or several persons, respectively) upon such payment (or payments) being made still in the hands of the Secretary and Treasurer of the said Bank (or Nazir of the said District Court). No notice (or notices) of such payment (or payments) having been made has (or have) been given to me by the said G. F. (or several persons, respectively).

(Usual Jurat.)

The schedule above referred to.

Name.	Address.	Description.	Amount.	Date of balance order.	Number of certificate.

App. K.
Forms 50, 51.

FORM No. 50.

(Chapter XXXI, rule 67.)

(For general heading, see rule 1.)

To

THE SECRETARY AND TREASURER OF
THE BANK OF BENGAL.

SIR,

Request
to invest
cash in
Government
Promissory
Notes.

It appearing that the sum of Rs. cash is standing to the credit of the account of the official liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. , part thereof, in the purchase of per cent. Government Promissory Notes in the name of R. P. H. of etc., the official liquidator of the said company, and to deposit such Government Promissory Notes in the Bank of Bengal (or the branch thereof or in the case of a District Court into the District Court at) in the name and on behalf of the official liquidator. The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by a Judge of the High Court of Judicature at Fort William in Bengal [or by the Registrar of the High Court, etc., under the orders of the Judge] (or by the Judge of the District Court of or under an order to be made by the said Judge).

Dated this day of 19 .

I am, Sir,

Your most obedient servant,

R. P. H.,

Official Liquidator.

G. H.,
(Countersigned.)

FORM No. 51.

(Chapter XXXI, rule 67.)

(For general heading, see rule 1.)

To

THE JUDGE OF THE DISTRICT COURT AT

SIR,

Request to
the Court to
sanction the
investment of

It appearing that the sum of Rs. cash is standing in the said Court to the credit of the account of myself, the official liquidator of the abovenamed company, you are

App. K.
Forms 51-53.
cash in
Government
Promissory
Notes.

hereby requested to authorise me to invest the sum of Rs. _____
part thereof in the purchase of _____ per cent. _____
Government Promissory Notes in my name as such official _____
liquidator and to deposit such Government notes in the said _____
Court in my name and on my behalf as such official liquidator.
The said notes are not to be sold, transferred, or otherwise
dealt with, except upon a direction for that purpose signed
by the official liquidator of the said company and counter-
signed by the Judge of your said Court.

Dated the _____ day of _____ 19 .

I am, Sir,
Your obedient servant,

R. P. H.,
Official Liquidator.

FORM No. 52.

(Chapter XXXI, rule 69.)

(For general heading, see rule 1.)

Notice is hereby given that the High Court of Judicature at Fort William in Bengal (or the District Court of _____) Notice (or
has directed a meeting of the creditors (or contributories) advertisement) of
of the abovenamed company to be summoned, pursuant to the meeting of
above Act, for the purpose of ascertaining their wishes as to creditors or
(state the object for which meeting called, unless notice is by contribu-
advertisement, in which case say, certain matters relating to tories.
the winding up of the said company) and that such meeting
will be held on _____ day the _____ day of
19 at _____ o'clock in the _____ noon, at
in the _____, at which time and place all the creditors
(or contributories) of the said company are requested to
attend. (The said Court has appointed H. T., etc., to act
as Chairman of such meeting.) Dated this _____ day of
19 .

R. P. H.,
Official Liquidator.

FORM No. 53.

(Chapter XXXI, rules 69, 70 and 71.)

(For general heading, see rule 1.)

I, H. T., the person appointed by the High Court of Judi- Chairman's
cature at Fort William in Bengal (or District Court of _____) report of
result of

App. K.
Form 53.

meeting of
creditors or
contribu-
tories.

to act as Chairman of a meeting of the creditors (or contributories) of the abovenamed company, summoned by advertisement (or notice) dated the day of 19 , and held on the day of 19 , at do hereby report to the said Court the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy by creditors, to whom debts against the said company have been allowed amounting in the whole to the value of Rs. (or by contributories holding in the whole shares in the said company and entitled respectively by the regulations of the company, to the number of votes hereinafter mentioned).

The question submitted to the said meeting was whether the creditors (or contributories) of the said company approved of the proposal of the official liquidator of the said company that, etc., (*as the case may be*), and wished that such proposal would be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into effect, or the result of the voting upon such question was as follows:—

The undermentioned creditors (or contributories) voted in favour of the said proposal being adopted and carried into effect.

Name of creditor (or contributory).	Address.	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company.

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect.

Name of creditor (or contributory).	Address.	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company.

Dated this day of 19 .

(Signed) H. T.,
Chairman.

FORM No. 54.

(Chapter XXXI, rule 70.)

(For general heading, see rule 1.)

I, W. S. of , in the being a Appoint
creditor (or contributory) of the abovenamed company, hereby ment of
appoint of , as my proxy to vote for me and on proxy to
my behalf at the meeting of the creditors (or contributories) meeting of
of the said company summoned by the direction of the creditors or
to be held on the day of , and at any ad-tribu-
journalment thereof torics.

As witness my hand this day of
19 , signed by the said W. S. in the presence of

FORM No. 55.

(Chapter XXXI, rule 71.)

(For general heading, see rule 1.)

Mr. H. T. of etc., one of the creditors (or contributories) Memorandum of
of the abovenamed company, is appointed to act as Chairman appointment
of a meeting of the creditors (or contributories) of the said of a person
company, summoned by direction of the said Judge, pursuant to act as

App. K.
Forms 55-57.

Chairman
at meeting
of creditors
or contribu-
tories.

to the above Act, to be held on the day of
19 , at o'clock in the noon, at
and to report the result of such meeting to the said Judge.

The said meeting is summoned for the purpose of ascertain-
ing the wishes of the creditors (or contributories) of the said
company as to (*state the object for which meeting called*)
and at such meeting the votes of the creditors (or contri-
butories) may be given either personally or by proxy.

Dated this day of 19 .

FORM No. 56.

(Chapter XXXI, rule 72.)

(*For general heading, see rule 1.*)

Memoran-
dum of
sanction of
Judge to
accepting bill
of exchange.

The Judge has sanctioned the acceptance of this bill of
exchange by the official liquidator on behalf of the said
company

FORM No. 57.

(Chapter XXXI, rule 73.)

(*For general heading, see rule 1.*)

Memoran-
dum of
agreement of
compromise
with a con-
tributory.

Memorandum of agreement entered into this day
of 19 , between R. P. H. of etc., the
official liquidator of the abovenamed company, of the one
part, and S. B. of etc., one of the contributories of the
said company, of the other part.

Whereas the said S. B. has been settled on the list of
contributories of the said company as a contributory in
respect of shares in the said company; and where-
as by an order made by dated the
day of 19 , a call of Rs. per share was
made on all the contributories of the said company, and there
is now due from the said S. B. to the said company the sum of
Rs. in respect of the said call; and whereas the said
S. B. has proposed to pay to the said official liquidator the
sum of Rs. by way of compromise, and in satisfaction
and discharge of the said sum of Rs. and of all
liability whatsoever, as a contributory of the said company;
and whereas the said official liquidator, having investigated
the affairs of the said S. B., and believing that such compro-
mise will be beneficial to the said company hath, in exercise
of the power for that purpose given to him by the above
Act, agreed to accept the same subject to the sanction of
the Court, and to the conditions and agreements hereinafter
contained. Now it is hereby agreed by and between the said
parties hereto:

1. That the said official liquidator shall, before the day of next, apply to a Judge of the said Court, at Chambers, to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Judge the said S. B. shall, within day next after such sanction, pay to the said official liquidator the said sum of Rs. and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said company, and all claims and demands whatsoever which the said S. B. has or may have against the said company in respect of the said shares, or the distribution of the assets of the said company, otherwise howsoever.

3. That the said sum of Rs. and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the company or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. H. in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5. That in the case this agreement shall be sanctioned by the said Judge and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of Rs. or so much thereof as shall then remain due and owing and unpaid, as if this agreement had not been entered into.

Witness to the signatures of
the said R. P. H. and S. B.
C. D. of etc.

R. P. H.,
Official Liquidator.
S. B.

**App. K.
Forms 58-60.**

FORM No. 58.

(Chapter XXXI, rule 73.)

(For general heading, see rule 1.)

**Memoran-
dum of
sanction of
Judge to
agreement of
compromise.**

The Judge has sanctioned this agreement of compromise.

FORM No. 59.

(Chapter XXXI, rule 74.)

(For general heading, see rule 1.)

Order on memorandum of the sanction of the Judge for certain acts to be done by official liquidator.

The Judge doth hereby sanction (or has sanctioned) the following proceedings being taken (or acts being done) by the official liquidator of the abovenamed company, namely (*state the proceedings to be taken or acts to be done as*) the bringing or instituting and prosecuting an action in the name and on behalf of the said company against, or defending an action brought against the said company, by K. M. of etc., to recover a debt or sum of Rs. _____ alleged to be due from (or to) the said K. M. to (or from) the said company, etc.

FORM No. 60.

(Chapter XXXI, rule 82.)

Appearance Book.

In the matter, etc.

Appearance Book.

Date when appearance entered.	Party's name.	Whether creditor or contri- butor.	If he appears in person, his address for service.	If he appears by an attorney his attorney's name.	Attorney's address.	Amount of debt (or number of shares).

FORM No. 61.

(Chapter XXXI, rule 86.)

(For general heading, see rule 1.)

It is hereby ordered that all the winding-up proceedings in the above matter, together with all documents and papers thereto relating, and all moneys and securities standing to the credit of the official liquidator, be and they are hereby transferred from the said High Court to the District Court and the said District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Dated this day of 19 .

A. B.,
Judge of High Court.

FORM No. 62.

(Chapter XXXI, rule 86.)

(For general heading, see rule 1.)

It is hereby ordered that all the winding-up proceedings in the above matter, together with all documents and papers relating thereto, and all moneys and securities standing to the credit of the account of the official liquidator, be and they are hereby transferred from the District Court at to the District Court at and the said last-mentioned District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Dated this day of 19 .

A. B.,
Judge of High Court.

FORM No. 63.

(Chapter XXXI, rule 87.)

(For general heading, see rule 1.)

I hereby declare that R. P. H., the official liquidator of the abovenamed company, has passed his final account as of the company

App. K.
Form 63-65.

being
wound up,
and of the
official
liquidator
having passed
his final
account.

such official liquidator, and that the balance of Rs. hereby found to be due to (or from) the said official liquidator has been paid in the manner directed by the order dated the day of 19 , and that the affairs of the said company have been completely wound up. Dated this day of 19 .

A. B.,

Judge.

FORM No. 64.

(Chapter XXXI, rule 88.)

(For general heading, see rule 1.)

Order to
dissolve the
company.

Upon the application of the official liquidator of the above-named company, and upon reading an order dated the day of and the declaration of the Court dated the day of whereby it appears that the affairs of the said company have been completely wound up, and that the balance of Rs. due from (or to) the official liquidator has been paid in manner directed by the said order. It is ordered that the said company be dissolved as from this day of 19 , and that the recognizance, dated the day of 19 , entered into by the said official liquidator, together with W. B. and S. P. his sureties be vacated.

A. B.,

Registrar.

or A. B.,

District Judge.

FORM No. 65.

(Section 181 of the Companies Act.)

(For general heading, see rule 1.)

Sanction of
appointment
of Attorney
by Official
Liquidator
and appoint-
ment.

The Court sanctions the official liquidator appointing an attorney (or vakeel) to assist him in the performance of his duties.

L. H.

I hereby appoint _____ to be my attorney in this matter,
dated this _____ day of _____ 19 .

R. P. H.,
Official Liquidator.

FORM No. 66.

(Sections 185 and 187 of the Companies Act.)

(For general heading, see rule 1.)

Upon the application of, etc., and on reading, etc. It is Order for
ordered that A. B. of etc. do, within four days after service payment of
hereof pay to (or deliver, convey, surrender or transfer to or money or
into the hands of) R. P. H., the official liquidator of the delivery of
said company, at the office of the said R. P. H., situate at book, etc.,
etc., the sum of rupees _____, being the amount of debt to the
appearing to be due from the said A. B. on his account with official
the said company (or any sum or balance books, papers, liquidator.
estates or effects specifying the property) now being in the
hands of the said A. B., and to which the said company is
prima facie entitled (or otherwise as the case may be).

FORM No. 67.

(Section 185 of the Companies Act.)

(For general heading, see rule 1.)

A. B. of etc., and E. F. of etc., are hereby severally Summons
summoned to attend at _____ on the _____ day of _____ for persons
19 , at _____ of the _____ o'clock in the _____ noon, to to attend
be examined on the part of the said official liquidator (or of at Chambers
W. D. of etc.) for the purpose of proceedings directed by the to be
said Court to be taken before me in the above matter. (And examined.
the said A. B. is hereby required to bring with him and pro-
duce at the time and place aforesaid, a certain indenture
(*describe documents*) and all other books, papers, deeds, wri-
tings, and other documents in his custody or power in anywise
relating to the abovenamed company.)

Dated this _____ day of _____ 19 . This summons
was taken out by Messrs. C. & D. of _____, attorneys
for the official liquidator (or for the said W. D.).

APPENDIX L.

FORM No. 1.

(Chapter XXXII, rule 2.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

IN APPEAL FROM ITS ORIGINAL CIVIL JURISDICTION.

Appeal No.

SUIT No. OF 19 .

Appellant and
(Plaintiff or Defendant).

versus

Respondent and
(Defendant or Plaintiff).

Memoran-
dum of
appeal and
of review.

(Insert name) the appellant abovenamed appeals against
the (decree or) order of the Honourable Mr. Justice
in the above suit passed
on the day of 19 , for the
following amongst other reasons:—

1st.—That (here state grounds of appeal).

(By way of endorsement.)

Appeal No.

Suit No. of 19 .

Appellant.

versus

Respondent.

FORM No. 2.

(Chapter XXXIII, rule 1.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

IN APPEAL FROM ITS ORIGINAL CIVIL JURISDICTION.

Appeal No.

SUIT No. OF 19 .

*Appellant to England.**versus**Respondent to England.*To the Honourable Sir
Justices of the said Court.

and his Companion

The Petition of

SHEWETH—

1. That this suit was filed by the plaintiff in the Court of First Instance who prayed *(here set concise statement and give amount or value of subject matter).* Petition for leave to appeal to His Majesty in Council.

2. That the said suit came on for hearing before the Honourable Mr. Justice on the day of and his Lordship on the day of passed the decree (or order) filed of record in this suit on the day of 19 .

3. That *(here insert name of appellant in High Court)* feeling himself aggrieved by the said decree (or order) filed a memorandum of appeal against the same on the day of of

4. That the said appeal came on for argument before the Court of Appeal consisting of the Honourable and the Honourable on the day of and their Lordships on the day of passed the decree (or order) filed of record in this suit on the day of of

5. That your petitioner feeling himself aggrieved by the said decree (or order) is desirous of appealing to His Majesty in Council from the same on the grounds following *(here state the grounds and number them consecutively i, ii, iii, et seq.).*

6. That the amount or value of the subject matter of the suit in the Court of First Instance and of the matter in dispute or appeal to His Majesty in Council is Rs. 10,000 and upwards (or "that the decree (or order) from which an appeal is sought to His Majesty in Council involves a claim or question respecting property of the amount or value of Rs. 10,000 and upwards") *(If the appeal Court has affirmed the decree (or order) of the Court below add)* and that the appeal herein involves a substantial question of law.

7. That your petitioner is ready and willing to comply with the rules and orders as to giving security for costs and otherwise regulating appeals to His Majesty in Council.

- (a) to grant him a certificate that (*here state nature of certificate required as set out in paragraph 6*) and
- (b) to admit his petition and to transmit to His Majesty in Council under the seal of this Court a correct copy of the record so far as is material to the questions in dispute herein.

I, _____ the petitioner abovenamed make solemn affirmation (or oath) and say that what is stated in the foregoing petition is true to my knowledge, information and belief.
Solemnly affirmed (or sworn)

by at
this day of 19 .

(Chapter XXXIII, rule 8.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

IN APPEAL FROM ITS ORIGINAL CIVIL JURISDICTION.

Appeal No.

SUIT No. OF 19 .

Appellant to England.

UET&US

Respondent to England.

**Index to
paper-book.**

Index of documents to be included in the paper-book.

Serial No.	Date of filing.	Description of documents.	Page.

APPENDIX M.

FORM No. 1.

(Chapter XXXV, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

deceased.

The *ad valorem* fee payable on the valuation of the pro- Certificate of
 perty amounting to Rupees (————) ————— payment of
 has been paid. *ad valorem*
 duty.

Dated this

day of

19

istrar.

FORM No. 2.

(Chapter XXXV, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

deceased.

I do hereby certify that the *ad valorem* fee prescribed by Certificate
 Schedule I, clause 11 of the Court-Fees Act, 1870, is not that no duty
 payable in this case, it appearing from the affidavit of valua- is payable.
 tion that the amount or value of the estate does not exceed
 Rupees (1,000) One Thousand. Dated this day of
 19 .

*Attorney.**Taxing Officer.*

FORM No. 2A.

(Chapter XXXV, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

deceased.

Certificate
that no duty
is payable.

I do hereby certify that the *ad valorem* fee prescribed by Schedule I, clause 11 of the Court-Fees Act, 1870, is not payable in this case, it appearing from the affidavit of valuation that the debts of the deceased exceed the amount of assets. Dated this day of 19 .

Attorney.

Taxing Officer.

FORM No. 3.

(Chapter XXXV, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

deceased.

Certificate
that no duty
is payable.

I do hereby certify that the *ad valorem* fee prescribed by Schedule I, clause 11 of the Court-Fees Act, 1870, is not payable in this case, section 19C added to the said Act by Act XIII of 1875 being applicable thereto. Dated this day of 19 .

Attorney.

Taxing Officer.

FORM No. 4.

(Chapter XXXV, rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

deceased.

At the request of
Attorney of this Court, I do hereby certify that no intimation has been received by this Court from any other High Court or any District Court of any grant of Probate of any Will or Letters of Administration of the property and credits of the abovenamed deceased with effect throughout the whole of British India.

Certificate of
no applica-
tion made to
any other
Court for
Probate or
Letters of
Administra-
tion.

Dated this day of 19 .

Registrar.

FORM No. 5.

(Chapter XXXV, rule 12.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

GEORGE V, by the Grace of
God, of the United Kingdom of
Great Britain and Ireland, and of
the British Dominions beyond the
Seas, King, Defender of the Faith,
Emperor of India and so forth.

Petition for Probate
Letters of Administration
In the Goods of

*Deceased.**Petitioner.*

All persons claiming to have any interest in the estate of
the abovenamed deceased are hereby cited to come and see the
proceedings if they think fit before the grant of

Notice by
advertis-
ement of
citation.

App. H.
Form K, 2.

Witness
William aforesaid, the
the year of our Lord one thousand nine hundred and

Chief Justice at Fort
day of
in

Petitioner's Attorney.

Registrar.

FORM No. 6.

(Chapter XXXV, rule 15.)

Bond in case
of intestacy.

Know all men by these presents that we

are held and firmly bound unto the Honourable (the Chief Justice's name) Chief Justice of the High Court of Judicature at Fort William in Bengal, in the sum of Rupees

of good and lawful money to be paid to the said Honourable (the Chief Justice's name) or the Chief Justice of the said High Court for the time being for which payment we do hereby bind ourselves, and each and every of us binds himself for the whole, our and each and every of our heirs, executors, and administrators, unto the said Honourable (the Chief Justice's name), his successors in office or assigns firmly by these presents. Sealed with our seals dated the day of in the year of our Lord one thousand nine hundred and

The condition of the above written obligation is such that if the above bounden

Administrator of the property and credits of

deceased, do make or cause to be made a full and true inventory of all the estate of the said deceased, which has or shall come to the hands, possession, or knowledge of the said or into the hands or possession of any other person or persons, for and the same so made to exhibit or cause to be exhibited into the Registry of the said High Court, at or before the day of

next ensuing or within such further time as the Court may from time to time appoint: And the same estate, and all other the estate of the said deceased at the time of death, which, at any time after, shall come to the hands or possession of the said

or of any other person or persons for do ad-
minister according to law: And further do make, or cause
to be made, a true and just account of said
administration at or before the day of
which will be in the year of our Lord one thousand nine
hundred and or within such further time as the Court
may from time to time appoint: And all the rest and resi-
due of the said estate which shall be found remaining upon
the said administration account, the same being first examined
and allowed of by the said High Court of Judicature, shall
deliver and pay unto such person or persons respectively as
shall be lawfully entitled to such residue: And if it shall
hereafter appear that any last will and testament was made
by the said deceased, and the executor or executors therein
named do exhibit the same into the said Court, making request
to have it allowed and approved accordingly if the above
bounden

being thereunto required, do render and deliver the letters of
administration to granted (approbation of
such testament being first had and made) in the said Court,
then this obligation to be void and of none effect, else to
remain in full force and virtue.

Signed, sealed and delivered at

in the presence of

Registrar.

FORM No. 7.

(Chapter XXXV. rule 15.)

Know all men by these presents that we

are held and firmly bound unto the Honourable (the Chief
Justice's name) Chief Justice of the High Court of Judicature
at Fort William in Bengal, in the sum of Rupees

Bound in the
case of
Letters of
Administra-
tion with
will annexed.

of good and lawful money to be
paid to the said Honourable (the Chief Justice's name) or the
Chief Justice of the said High Court for the time being for

App. M.
Form 7.

which payment we do hereby bind ourselves, and each and every of us binds himself for the whole, our and each and every of our heirs, executors, and administrators, unto the said Honourable (the Chief Justice's name), his successors in office, or assigns firmly by these presents. Sealed with our seals dated the day of in the year of our Lord one thousand nine hundred and

The condition of the above written obligation is such that if the above bounden

Administrator of the property and credits of deceased, do make or cause to be made a full and true inventory of all the estate of the said deceased, which has or shall come to the hands, possession, or knowledge of the said or into the hands or possession of any other person or persons, for , and the same so made do exhibit or cause to be exhibited into the Registry of the said High Court, at or before the day of next ensuing or within such further time as the Court may from time to time appoint: And the same estate, and all other the estate of the said deceased at the time of death, which, at any time after, shall come to the hands or possession of the said or of any other person or persons for do administer according to law: And further do make, or cause to be made, a true and just account of said administration at or before the day of which will be in the year of our Lord one thousand nine hundred and

or within such further time as the Court may from time to time appoint: And all the rest and residue of the said estate which shall be found remaining upon the said administration account, the same being first examined and allowed of by the said High Court of Judicature, shall deliver and pay unto such person or persons respectively as shall be lawfully entitled to such residue, then this obligation to be void and of none effect, else to remain in full force and virtue.

Signed, sealed and delivered at

in the presence of

Registrar.

FORM No. 8.

(Chapter XXXV, rule 16.)

Know all men by these presents that I (or we)
and we Society Limited carrying on
business in Calcutta at
through (and hereinafter called the

Bond by
Guarantee
Society, in
case of
Intestacy.

Society) are held and firmly bound unto the Honourable (the
Chief Justice's name) Chief Justice of the High Court of
Judicature at Fort William in Bengal in the sum of Rs.

of good and lawful money to be paid to the said Honour-
able (the Chief Justice's name) or the Chief Justice of the
said High Court for the time being for which payment I (or
we) the said

do hereby bind myself
ourselves and each and every of us binds himself

for the whole my
our and each and every of my
our heirs, executors
and administrators, and we the Society for ourselves and our
successors, do bind and oblige ourselves for the whole unto
the Honourable (the Chief Justice's name), his successors in
office or assigns firmly by these presents and we the Society
do hereby submit ourselves to the jurisdiction of the said
High Court. Sealed with the seal of the said
and also with the seal of the said Society dated the
day of in the year of our Lord one thousand nine
hundred and . The condition of the above written
obligation is such that if the above bounden

Administrator of the property and credits of
deceased, do make or cause to be made a full and true inven-
tory of all the estate of the said deceased, which has or shall
come to the hands, possession or knowledge of him
them the said
or into the hands or possession of
any other person or persons, for him
them and the same so made do
exhibit or cause to be exhibited into the Registry of the said
High Court, at or before the day of
next ensuing, or within such further time as the Court may
from time to time appoint: And the same estate, and all
other the estate of the said deceased at the time of his
her death,
which at any time after shall come to the hands or possession
of the said

or of any other person or persons for him
them do adminis-
ter according to law: And further do make, or cause to be
made, a true and just account of his
their said administration at
or before the day of which
will be in the year of our Lord one thousand nine hundred and
or within such further time as the said High Court

App. M.
Forms 8, 9.

may from time to time appoint: And all the rest and residue of the said estate which shall be found remaining upon the said administration account, the same being first examined and allowed of by the said High Court shall deliver and pay unto such person or persons respectively as shall be lawfully entitled to such residue: And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said High Court, making request to have it allowed and approved accordingly, if the above bounden being thereunto required, do render and deliver the Letters of Administration to ^{him}~~them~~ granted (approbation of such testament being first had and made) in the said High Court, then this obligation to be void and of none effect, else to remain in full force and virtue.

Signed, sealed and delivered at

in presence of

Registrar.

FORM No. 9.

(Chapter XXXV, rule 16.)

Bond by
Guarantee
Society, in
case of
Letters of
Administration with
Will
annexed.

Know all men by these presents that I (or we) and we Society Limited carrying on business in Calcutta at through (and hereinafter called the Society) are held and firmly bound unto the Honourable (the Chief Justice's name) the Chief Justice of the High Court of Judicature at Fort William in Bengal in the sum of Rs. of good and lawful money to be paid to the said Honourable (the Chief Justice's name) or the Chief Justice of the said High Court for the time being for which payment well and truly to be made I (or we) the said do hereby bind ^{myself}~~ourselves~~ and each and every of us binds himself for the whole ^{my}~~our~~ and each of ^{my}~~our~~ heirs, executors and administrators, and we the Society for ourselves and our successors, do bind and oblige ourselves

for the whole unto the Honourable (the Chief Justice's name), his successors in office or assigns firmly by these presents and we the Society do hereby submit ourselves to the jurisdiction of the said High Court. Sealed with the seal of the said _____, and also with the seal of the said Society dated the _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

The condition of the above written obligation is such that if the above bounden _____ Administrator of the property and credits of _____ deceased, do make or cause to be made a full and true inventory of all the estate of the said deceased, which has or shall come to the hands, possession, or knowledge of him the said _____ or into the hands or possession of any other person or persons, for him and the same so made to exhibit or cause to be exhibited into the Registry of the said High Court, at or before the _____ day of _____ next ensuing or within such further time as the said High Court may from time to time appoint. And the same estate, and all other the estate of the said deceased at the time of his death, which at any time after her shall come to the hands or possession of the said _____ or of any other person or persons for him do administer according to law. And further do make, or cause to be made, a true and just account of his said administration at or before the _____ day of _____ which will be in the year of our Lord one thousand nine hundred and _____ or within such further time as the said High Court may from time to time appoint. And all the rest and residue of the said estate which shall be found remaining upon the said administration account, the same being first examined and allowed of by the said High Court, shall deliver and pay unto such person or persons respectively as shall be lawfully entitled to such residue, then this obligation to be void and of none effect, else to remain in full force and virtue.

Signed, sealed and delivered at

in the presence of

Registrar.

App. M.
Forms 10, 11.

FORM No. 10.

(Chapter XXXV, rule 17.)

FROM

THE REGISTRAR,
HIGH COURT, ORIGINAL SIDE,

To

Calcutta, the

19

SIRS,

Letter to
accompany
Bond of
Guarantee
Society.

It is proposed that the Assurance Co., Limited, should stand surety for the administrators in the above Estate to the amount of Rs. I send herewith a bond No. for signature. I shall feel obliged if you will inform me whether the signatory of the bond, or if more than one, each of the signatories, is the authorized agent of the Assurance Company for the purpose of executing the proposed bond for Rs. as it is only on that assumption that the bond is accepted.

I have the honour to be,

SIRS,

Your most obedient servant,

Registrar.

FORM No. 11.

(Chapter XXXV, rule 17.)

FROM

To

THE REGISTRAR,
HIGH COURT, ORIGINAL SIDE.

Calcutta, the

19 .

SIR,

Reply of
Guarantee
Society's
Agent.

We return herewith the bond No. , and in reply to your enquiry, we have to state that its signature is duly authorised.

We have the honour to be,

SIR,

Your most obedient servant,

FORM No. 12.

(Chapter XXXV, rule 24.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

In the matter of the Petition
of late of
inhabitant, deceased.
Petitioner.

and

(name, address, description and
occupation) *Caveator.*

To

Registrar.

SIR,

Let nothing be done in the matter of the estate of the above-*Caveator*
named late of deceased, who died
at
on or about the day of without
due notice to the abovenamed caveator.

Dated this day of 19 .

Yours faithfully,

Attorney for the Caveator.

FORM No. 13.

(Chapter XXXV, rule 24.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

TESTAMENTARY AND INTESTATE JURISDICTION.

Re deceased.
Petitioner.

To

Attorneys for the Petitioner.

Take notice that on the day of
caveat was filed in my office in the above petition by
a Notice of caveat.

Yours faithfully,

Registrar

CALCUTTA, HIGH COURT,

REGISTRAR'S OFFICE;

The day of

RULES OF THE HIGH COURT, 1914.

**App. B.
Forms 14, 15.**

Form No. 14.

(Chapter XXXV, rule 28.)

**IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.**

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

Deceased.

To

**Attorney for the petitioner for in the
above goods.**

SIR,

**Notice of
affidavit in
support of
caveat.**

Please take notice that on the day of
an affidavit in support of the caveat in the above goods was
filed in the Registrar's office by me on behalf of (*name, des-
cription and address of the caveator*) the caveator.

Yours faithfully,

(Signature.)

Attorney for the caveator.

(Date.)

Form No. 15.

(Chapter XXXV, rule 28.)

**IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.**

TESTAMENTARY AND INTESTATE JURISDICTION.

In the Goods of

Deceased.

**Order for
contentious
cause.**

This matter coming on this day for argument before the
Honourable one of the Judges of
this Court, on the caveat filed by attorney for
filed on the day of
and upon reading on the part of of No.
in the town of Calcutta sole executor named in the

alleged last will and testament of the deceased abovenamed his petition for Probate in the above goods and the exhibits annexed thereto and marked respectively A, B and C (the said Exhibit A being the alleged original English will) and an affidavit of the said

day of affirmed on the day of and an affidavit of affirmed on the day of and an affidavit of all filed on the day of and an affidavit of the said

affirmed and filed on the day of and upon reading on the part of the said caveator his affidavit affirmed on the day of and filed on the day of and upon hearing Mr. advocate for the said

and Mr. advocate for the said caveator *It is ordered* that this matter be set down as a contentious cause (the said of No.

in the town of Calcutta the sole executor named in the said alleged last will and testament of the deceased abovenamed being the plaintiff and of No. in the town of Calcutta being the defendant) and it is further ordered that the said petition for Probate filed on the day of

be numbered and registered and be deemed as a plaint filed against the said and the affidavit of the said filed on the

day of he deemed as his written statement. And it is further ordered that the costs of and incidental to this application be and the same are hereby reserved. Witness, etc.

This day of .

Attorney.

Attorney.

Registrar.

APPENDIX N.

FORM No. 1.

(Chapter XXXVII, rule 31.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the

RULES OF THE HIGH COURT, 1914.

**App. N.
Forms 1, 2.**

**British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.**

To the officer in charge of the (name of jail).

Warrant.

You are hereby required to have the body of A. B., now a prisoner in the (name of jail), under safe and sure conduct, before the High Court, on its Original Side, on the day of next, by of the clock in the noon of the same day, for the purpose of being bailed, and unless the said A. B. shall then and there be bailed, and by the said Court ordered to be released from custody, cause him, after the said Court shall have dispensed with his further attendance, to be conveyed under safe and sure conduct, back to the said jail.

Dated this day of 19

Registrar

(or Clerk of the Crown).

FORM No. 2.

(Chapter XXXVIII, rule 13.)

**IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.**

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

**George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the
British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.**

Warrant.

To the officer in charge of (name of jail or lunatic asylum, or other place where the person is detained in custody) or to (name of person).

You are hereby required to have the body of B. C., now a prisoner in your custody (or now in your custody) before the High Court, on its Original Side on the day of next, by of the clock in the forenoon of the same day to be dealt with according to law and you shall then and there abide by such order as shall in that behalf be made by the said Court (if the prisoner is detained in public custody add) and unless the said B. C. shall then and there, by the said Court, be ordered to be released, you shall, after the said Court shall have dispensed with his further attendance, cause

him to be conveyed, under safe and sure conduct, back to the said jail (or asylum or other place of custody).

Form 2, 2.

Dated this day of 19 .

Registrar

(or Clerk of the Crown)

FORM No. 3.

(Chapter XXXVIII, rule 13.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the
British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.

To the officer in charge of the (name of jail), or of the **Warrant.**
(name of asylum), or to (name of officer) in charge of B. C.,
an alleged lunatic.

You are hereby required to have the body of B. C., now a
prisoner in the (name of jail) or now in custody at the (name
of asylum) or now in your charge, under safe and sure conduct
before the High Court, on its Original Side, on the
day of next, by of the clock in the forenoon
of the same day there to be dealt with according to law, and
unless the said B. C. shall then and there by the said Court
be ordered to be discharged, cause him, after the said Court
shall have dispensed with his further attendance, to be con-
veyed under safe and sure conduct, back to the said jail (or
asylum or other custody).

Dated this day of 19

Registrar

(or Clerk of the Crown).

App. N.
Forms 4, 5.

FORM No. 4.

(Chapter XXXVIII, rule 13.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the
British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.

To the officer in charge of the (name of jail).

Warrant.

You are hereby required to have the body of B. C., now a
prisoner in the (name of jail), under safe and sure conduct,
before the High Court, on its Original Side, on the
day of next, by of the clock in the forenoon
of the same day, there to give testimony in a certain charge
or prosecution now pending before the said Court against
D. E. and after the said B. C. shall then and there have given
his testimony before the said Court, or the said Court shall have
dispensed with his further attendance cause him to be con-
veyed under safe and sure conduct, back to the said (name of
jail).

Dated this day of 19 .

Registrar

(or Clerk of the Crown).

FORM No. 5.

(Chapter XXXVIII, rule 13.)

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the
British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.

To the officer in charge of the (name of jail).

Warrant.

You are hereby required to have the body of B. C., now a
prisoner in the (name of jail), under safe and sure conduct,

before the officers assembled at a Court-martial (or before the Commissioners acting under the authority of a commission from the Governor General in Council), at on the day of next, by of the clock, in the forenoon of the same day, for the trial of the said B. C. (or there to give testimony in a certain trial now pending before the said Court-martial, or the said Commissioners against D. E. or as the case may be), and after the trial of the said B. C., or after the said B. C. shall then and there have given his testimony before the said Court-martial (or the said Commissioners) or the said Court-martial (or the said Commissioners) shall have dispensed with his further attendance, cause him to be conveyed, under safe and sure conduct, back to the said (name of jail).

Dated this day of 19 .

Registrar
(or Clerk of the Crown).

FORM No. 6.

(Chapter XXXVIII, rule 13.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

ORDINARY ORIGINAL CRIMINAL JURISDICTION.

George V, by the Grace of God,
of the United Kingdom of Great
Britain and Ireland, and of the
British Dominions beyond the Seas,
King, Defender of the Faith,
Emperor of India, and so forth.

To the officer in charge (name of jail).

You are hereby required to cause the body of B. C., now a ^{Warrant.} prisoner in the (name of jail) to be conveyed, under safe and sure conduct, to the jail at and on or before the day of , made over to the officer in charge of such jail, to be by him there kept in intermediate custody for the purpose of trial before the High Court in the exercise of Original Criminal Jurisdiction at its next sittings to be held at (name of place).

Dated this day of 19 .

Registrar
(or Clerk of the Crown).

APPENDIX O.

ORDER OF HIS MAJESTY IN COUNCIL, DATED 7TH AUGUST 1905,
BY WHICH THE COLONIAL SOLICITORS ACT, 1900, IS MADE
APPLICABLE TO SOLICITORS OF THIS COURT.

[Referred to in note to Rule 14, Chapter I, *ante*, p. 112.]

AT THE COURT OF ST. JAMES.

The 7th day of August 1905.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY.

His Royal Highness The Prince of Wales.

Lord President.

Earl of Kintore.

Sir Francis Bertie.

WHEREAS, by the Colonial Solicitors Act, 1900, it is enacted that where as respects a Superior Court in a British Possession, His Majesty the King in Council is satisfied on the report of a Secretary of State:—

- (a) that the regulations respecting the admission of persons to be Solicitors of that Superior Court are such as to secure that those Solicitors possess proper qualifications and competency; and
- (b) that by the law of the British Possession the Solicitors of the Supreme Court will be admitted to be Solicitors of the Superior Court in the Possession on terms as favourable as those on which it is proposed to admit Solicitors of that Superior Court in pursuance of the said Act to be Solicitors of the Supreme Court;

His Majesty in Council may order that the said Act shall apply and the same shall accordingly apply to the said Superior Court and British Possession, subject to any exceptions, conditions, and modifications specified in the order:

And whereas by the said Act it is further provided that His Majesty in Council by the same or any subsequent order may as respects the Court and British Possession named in the order provide for all matters authorised by the said Act to be prescribed, and for all matters appearing to His Majesty to be necessary or proper for giving effect to the order and to the said Act and that an order in Council applying the Act to a Court in a British Possession may provide that Solicitors of that Court may be admitted by virtue of the said Act to be Solicitors in any part of the United Kingdom, namely,

England, Scotland, or Ireland, or in two or one of those parts only :

And whereas application has been made by the Government of India that the said Act may be applied to the High Court of Judicature at Fort William in Bengal and to the Province of Bengal :

And whereas His Majesty in Council on the report of the Secretary of State for India in Council is satisfied that the regulations respecting the admission of persons to the Solicitors of the High Court of Judicature at Fort William in Bengal, are such as to secure that those Solicitors possess proper qualifications and competency and that by the law of the Province of Bengal the Solicitors of the Supreme Court in England will be admitted to be Solicitors of the High Court of Judicature at Fort William in Bengal, on terms as favourable as those on which it is proposed to admit Solicitors of that Court in pursuance of the said Act to be Solicitors of the Supreme Court :

NOW, THEREFORE, HIS MAJESTY in pursuance of the said recited Act and in execution of the powers thereby in His Majesty vested, is pleased by and with the advice of His Privy Council, to order and it is hereby ordered that the Colonial Solicitors Act, 1900, shall apply to the High Court of Judicature at Fort William in Bengal and to the Province of Bengal, and that Solicitors of the High Court of Judicature at Fort William in Bengal, may be admitted by virtue of the said Act to be Solicitors in England subject to the conditions hereinafter specified.

(1) A Solicitor of the High Court of Judicature at Fort William in Bengal (hereinafter called the applicant) who, having been in practice before such Court for not less than three years, is desirous of being admitted to be a Solicitor of the Supreme Court in England, shall be a male British subject.

(2) The applicant shall, four calendar months at least before the first day of the month in which he proposes to be admitted, leave with the Registrar of Solicitors, his original certificate of admission in the High Court of Judicature at Fort William in Bengal, together with—

- (a) a certificate from the authority of the Province of Bengal in whose custody the roll of the Solicitors of the said Court is kept stating that his name is still upon the roll and has never been removed therefrom and that no order has ever been made directing him to be suspended from practising his profession :
- (b) one or more certificates of fitness and character signed by two resident practising Solicitors of at least five years' standing in the said Court and by at least

App. O.
Sch. A.

one of the Judges or officers next in rank of such Court:

- (c) a statutory declaration in terms of or to the effect of that set out in the Schedule (A) hereunto annexed.

(3) The leaving of the before-mentioned documents shall be equivalent to notice of intention to apply for admission within the meaning of the Acts regulating the admission of Solicitors in England.

(4) A certificate under the hand of the Registrar of Solicitors that the applicant has complied with the provisions of the Colonial Solicitors Act, 1900, and of this order, shall be equivalent to the certificate of his having passed the Final Examination required in England.

(5) The application for admission to be a Solicitor in England shall be made to the Master of the Rolls.

(6) The applicant in England shall not be required to pass any examination either before or after making such application.

(7) The admission of the applicant as a Solicitor in England shall be stamped with the stamps required to be impressed on the admission of Solicitors in England and shall be impressed with such further stamp as shall, together with the amount of stamps paid on articles of clerkship and admission in the Province of Bengal (such amount being certified by a Judge of the High Court of Judicature at Fort William in Bengal, in the form set out in the Schedule (B) hereunto annexed) be equal in amount to the sum payable on Articles of Clerkship in England.

- (8) The following fee shall be paid by the applicant:—

To the Law Society—

	£	s.	d.
Before entering his name on the Roll of Solicitors	5	0	0

A. W. FITZROY.

SCHEDULE A.

In the matter of the Colonial Solicitors Act, 1900,

and

In the matter of

I in the Province of Bengal, do solemnly and sincerely declare as follows:—

1. I am a male British subject.

2. I was on the day of admitted a Solicitor of the High Court of Judicature at Fort

William in Bengal, and I have been in practice before such Court for not less than three years. My name remains on the Roll of the said Court, and I have not at any time been suspended from practice by the Court or by any Judge thereof, nor are any proceedings pending to strike my name off the said Roll or to suspend me from practice. I beg to refer to the certificate of _____ marked "A" now produced to me in proof of the statements in this paragraph.

3. I have not been bankrupt or insolvent nor have I made a composition or arrangement with my creditors. (If this is not the case, state the facts with dates, and show that a complete discharge has been obtained.)

4. The document now produced and shown to me and marked with the letter "B" is my original certificate of admission in the said Court, and the documents now produced and shown to me and marked respectively with the letters "C" and "D" are respectively certificates of character and as to my fitness to be admitted a Solicitor of the Supreme Court in England, signed respectively by _____ one of the Judges of the said Court (if not a Judge state his rank) and by _____ of _____ and _____ two practising Solicitors of the said Court of at least five years' standing.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

SCHEDULE B.

I, (name and style of Judge) do hereby certify that the amount of stamps paid on Articles of Clerkship when (name and style of applicant) was articled was the sum of £ _____, and on admission when he was admitted to practise the sum of £ _____. (To be signed and attested.)

APPENDIX P.

RULES OF THE LOCAL GOVERNMENT, UNDER SECTION 27 OF THE COURT FEES ACT, 1870, FOR REGULATING THE SUPPLY, ETC., OF STAMPS, DATED 9TH MAY 1870.

[Referred to in note to Rule 74 of Chapter XXXVI, p. 381.]

The following rules for regulating the supply, number, and keeping accounts of stamps to be used in the High Court of Judicature at Fort William in Bengal in the exercise of original jurisdiction, under section 3 of the Court Fees Act, 1870, are made by the Lieutenant-Governor of Bengal, with the concurrence of the Chief Justice of the said High Court of Judicature, and are published for general information, as provided by section 27 of the Court Fees Act, 1870.

App. F.

Stamps of the values specified to be supplied.

1. Stamps of the values noted in the margin being required for the purposes of the Court, shall be supplied by the Collector of Calcutta in the same manner as all other stamps, either from his office direct, or through the licensed vendors; the Collector indenting on the Superintendent of Stamps, in whose charge					
Rs.	As.	Rs.	As.	Rs.	As.
0	1	2	0	10	0
0	2	3	0	20	0
0	3	4	0	25	0
0	4	5	0	30	0
0	6	6	0	40	0
0	8	7	0	50	0
0	12	8	0	100	0
1	0	9	0		

the reserve stock of such stamps shall be kept.

Provision for sale of stamps.

2. Until the Courts and offices are brought into one building, two Government stamp vendors shall be in attendance, one at the Courts' office, and the other at the place at which the sittings of the Courts of original jurisdiction shall be held.

Number of stamps.

3. The stamp affixed to a document shall be of an amount corresponding, as nearly as practicable, with the amount of the stamp which such document requires, in order that no greater number of stamps may be affixed to any document than is actually necessary.

Register to be kept.

4. A register shall be kept in each cause or matter, in which shall be entered the name of the cause or matter, and the description of every document or other matter in respect of which any fee is paid by stamp or stamps, and the value of the stamp or stamps used, and the name of the attorney or firm or person by whom stamps were produced.

RULES FOR THE USE OF STAMPS WHEN THE FEE IS PAYABLE BY GOVERNMENT.

Service stamps.

5. Stamps with the word "service" shall be made available for the payment of the fees of the Court which are now paid by the Government solicitor, or drawn in the contingent bill of the Court.

When to be used.

6. Service stamps shall be used in all cases in which the fee is payable by Government, and shall be affixed by the examiner of stamps or his assistants.

To be entered in register under a separate head.

7. Service stamps shall be entered in the daily register under the head "service," "solicitor to Government," or "crown office" respectively, instead of the name of the attorney in the cause, and shall be posted up accordingly.

Mode of procuring service stamps.

8. Officers of the High Court, requiring such stamps, will purchase the number required, paying for the same in cash, and will draw the amount in the contingent bill. A receipt for the amount, to be given by the Collector of Stamps, will

serve as a voucher for the charge to be made in the contingent bill.

9. The officers who shall obtain service stamps, shall, at the commencement of each month, file with the Taxing Officer a statement, showing the amount used, and the balance in hand. And it shall be the duty of the Taxing Officer to check every such statement by comparison with the ledger account.—*Calcutta Gazette*, 11th May 1870, p. 1073.

Account of service stamps to be rendered to and checked by Taxing Officer.

APPENDIX Q.

RULES AS TO THE EXPENSES OF COMPLAINANTS OR WITNESSES COMING FROM THE MOFUSSIL TO ATTEND CRIMINAL TRIALS BEFORE THE HIGH COURT ON ITS ORIGINAL SIDE.

[Referred to in note to Rule 6 of Chapter XXXVII.]

In pursuance of section 544 of Act X of 1882, the following rules have been passed by the Lieutenant-Governor of Bengal with the sanction of the Governor General of India in Council:—

I.—The expenses of complainants or witnesses other than Government servants coming from the mofussil to attend criminal trials before the High Court on the Original Side shall be payable at the rates specified below:—(i) in cases in which the prosecution is instituted or carried on by or under the orders, or with the sanction, of the Government, or any Judge, Magistrate, or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (ii) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code (Act X of 1882) as not bailable; and (iii) in all cases in which witnesses are bound over to appear before the High Court.

Expenses of complainants and witnesses other than Government servants attending Criminal Trials.

(a) *Travelling Charges, etc., to be allowed to Europeans, Eurasians and Natives.*

Travelling charges.

1st class. 2nd class. 3rd class.

Travelling expenses—

If by dāk 8 annas per mile.

If by steamer (including mess). Actual expenses Actual expenses Actual expenses.

If by rail 1st class fare . 2nd class fare . 3rd class fare.

Conveyance hire for the days of actual attendance at the High Court. Actual expenses not exceeding Rs. 3 per diem. Actual expenses not exceeding Rs. 8 per diem. Nil

App. Q.

Purdah women when travelling by rail in a detached compartment to be allowed any necessary extra expense that may be incurred by them for that purpose.

Subsistence allowance.

(b) *Subsistence allowance to Europeans and Eurasians.*

	1st class.	2nd class.	3rd class.
Dāk bungalow and hotel expenses by the way when travelling by dāk or by rail.	Actual expenses not exceeding Rs. 4 per diem.	Actual expenses not exceeding Rs. 2 per diem.	Actual expenses not exceeding Re. 1 per diem.
Boarding expenses in Calcutta.	Actual expenses not exceeding Rs. 6 per diem.	Actual expenses not exceeding Rs. 3 per diem.	Actual expenses not exceeding Re. 1 per diem.

(c) *Subsistence allowance to Natives.*

	1st class.	2nd class.	3rd class.
Both when travelling and while in Calcutta.	Actual expenses not exceeding Rs. 3-8 per diem.	Actual expenses not exceeding Rs. 2-8 per diem.	Actual expenses not exceeding 12 annas per diem.

Professional witnesses.

(d) For witnesses following any profession, such as medicine or law, not being Government servants, a special allowance may be made by the presiding Judge according to circumstances.

Payments by Commissioner of Police.

II.—Except as provided in rule V, all payments to complainants or witnesses under these rules shall be made by the Commissioner of Police, Calcutta.

Without order.

The Commissioner of Police shall make payments to complainants or witnesses under these rules in all cases except those falling under rule I (d) and rules X and XI without receiving any order from the High Court; provided that in any case the Court may disallow, if it thinks fit, the expenses of any complainant or witness appearing before it.

Proviso.

Disallowance of expenses by Court to be notified to Commissioner of Police.

In any case in which the Court disallows the expenses of any complainant or witness, notice of such disallowance shall be communicated immediately to the Commissioner of Police, who shall make no payment to such complainant or witness.

Commissioner of Police to certify to

III.—If in any case the Commissioner of Police shall refuse to pay the expenses of a complainant or a witness, or shall pay or offer to pay less than the amount claimed as payable under

these rules, he shall, if required by such complainant or witness, certify his reason for so doing to the High Court; and the High Court or a Judge thereof may, on the application of such complainant or witness, and the production of such certificate, and on being satisfied that the case is a proper one for making the direction hereinafter mentioned, direct the payment of such sum or further sum as it may think fit.

Court reason
of refusing
expenses,
etc.

IV.—The Magistrate or other authority who commits the case for trial to the High Court, or binds over any complainant or witness to appear at such trial, shall determine to which of the above classes the complainants and witnesses respectively belong, and shall report the classification to the Commissioner of Police at Calcutta, and also to the High Court.

Committing
Magistrate
to classify
complainants
and wit-
nesses, and
report classi-
fication.

V.—Mofussil Magistrates shall make advances to complainants and witnesses desiring it, and shall report the fact to the Commissioner of Police, who shall refund the amount advanced to the Magistrate.

Mofussil
Magistrates
to make
advances,
and report
same.

VI.—Mofussil Magistrates shall report to the Commissioner of Police the date of departure of complainants and witnesses.

And report
departure of
complain-
ants, etc.

VII.—Complainants and witnesses shall, if possible, travel by rail or steamer.

Mode of
travelling.

VIII.—Complainants and witnesses shall report their arrival to the Commissioner of Police.

Report on
arrival.

IX.—Subsistence allowance at Calcutta shall cease as soon after the trial as possible.

Subsistence
allowance.

X.—Complainants and witnesses who are temporarily residing in Calcutta, or who have permanent or temporary homes in Calcutta, but follow occupations elsewhere, if detained in Calcutta in consequence of being bound over to appear and prosecute or give evidence in any criminal trial before the High Court, shall be dealt with in the same manner as complainants and witnesses coming from the mofussil to attend at such trial, and be entitled to their reasonable expenses under the preceding rules, so far as the same are applicable to their case, and according to the scales above laid down, having regard to the class under which they fall; provided they prove to the satisfaction of the Judge that they have been actually detained in Calcutta by reason of their having been so bound over, and the Judge is further of opinion that the prosecution is a proper one.

When
persons in
Calcutta to
be dealt with
as if coming
from the
Mofussil.

XI.—Special or peculiar cases not coming under the operation of any of the preceding rules, in which a claim is made by any complainant or witness for subsistence money and travelling allowance, or either of them, may be dealt with according to their merits, and at the discretion of the presiding Judge, and as nearly as may be in accordance with the rules above laid down.

Cases other-
wise unpro-
vided for.

App. Q. R.

Payments
when ordered
by the
Court.

Government
servants to
be allowed
travelling
expenses
under the
Civil Travel-
ling Allow-
ance Code.

Fine Fund.

XII.—In all cases falling under rule I (d) and rules X and XI, on the production of a certificate signed by the Registrar or Clerk of the Crown, stating that a certain amount has been allowed by the presiding Judge as the reasonable expense of the complainant or witness, the Commissioner of Police shall pay such amount to the party named in the certificate.

***XIII.**—Complainants or witnesses who are Government servants are to be allowed travelling expenses under the rules contained in the Civil Travelling Allowance Code, the charges being drawn in the same way as charges incurred in journeys performed on duty.

NOTE.—These rules are not to affect the right of the High Court to award compensation out of the Fine Fund to prosecutors for the costs incurred by them in prosecuting offences in proper cases.

APPENDIX R.

HOME DEPARTMENT RESOLUTION, No. 10—1101, DATED JULY 21ST, 1875.

[Referred to in note to Rule 1 of Chapter XXII.]

No fee to
judicial
officers acting
as commis-
sioners.

The question whether Judicial Officers of one province should be permitted to accept remuneration for executing commissions issued by Courts of other provinces has been submitted to the Government of India. After considering the opinions received from certain Local Governments and from the High Court, Calcutta, the Government of India concur with the majority of these opinions, and with the Lieutenant-Governor of the North-Western Provinces, that the receipt of such fees by officers who are paid by Government for all they do in their official capacity is improper; and the Governor-General in Council hereby directs that the practice of taking such fees, wherever it exists now, shall be discontinued.

COURT'S LETTER, No. 435, DATED 18TH FEBRUARY 1878, TO THE FIRST MOONSIFF OF COMILLAII.

No fee to
judicial
officers act-
ing as com-
missioners.

SIR,—I am directed to acknowledge the receipt of your letter of the 26th ultimo to the address of the Registrar of the High Court, Original Side, and in reply to inform you that, under orders issued by the Government of India in July 1875, you are not entitled to any remuneration for the execution of the commission to examine witnesses in the suit *Courjon v. Iehurauz*, or in similar cases.

* Travelling allowance is paid under the ordinary rules of the Civil Travelling Allowance Code, and advances, when necessary, will be made under those rules on the executive orders of the department to which the officer drawing the travelling allowance belongs.

**GOVERNMENT, HOME DEPARTMENT RESOLUTION No. 11-JUDL.—
1173-1190, DATED 8TH SEPTEMBER 1896.**

The Government of India issued the following orders on the subject of Government officers retaining fees for executing commissions issued by Civil Courts:—

“In the Resolution in the Home Department, dated the 21st July 1875, the Government of India directed the discontinuance of the practice, where it existed, of allowing officers in the Judicial Department of one Province to retain fees for executing commissions sent out by Courts of other Provinces. The general question of the disposal of fees received by Government officers for executing commissions issued by Civil Courts came under the consideration of the Government of India in the year 1888, with reference to certain orders of the Government of Bombay on the subject. It was decided that the prohibition contained in the Resolution of 1875 should apply to all cases in which Government servants might be called upon to execute commissions whether issued by Civil Courts of the Province in which they are employed or of other provinces. As, however, these orders were not published, they have not hitherto taken general effect. They were issued upon the following considerations:—

- (1) the Government pays its officers for the whole of their time, and if they have any additional work to perform in a public capacity, it is the Government, and not the officers themselves, who should receive the fees granted in respect of it; and
- (2) the practice of allowing salaried officers of Government to retain fees in return for the performance of such additional duties is open to the objection that it may tend to encourage them to seek such work to the detriment of their proper duties.

“The matter has now come under reconsideration on a reference from the Government of Madras, and the Governor-General in Council is of opinion that while the principle underlying the orders communicated to the Bombay Government should be maintained, it should be declared subject to certain limitations.

“2. There can be no question as to the proper course when the officer to whom the commission is addressed acts in the exercise of his official-functions, for example, when a commission to examine a witness is addressed by one Civil Court to another. In such cases fees realised from the applicant for a commission should be credited to Government. But there may be other cases in which it is not possible to lay down the rule with such inflexibility. In such cases, as for example, commissions for local investigations, or to examine accounts, an officer, in executing a commission, may (besides giving his time and labour) be required to use privately-acquired skill or

knowledge which has no connection with his official work or knowledge which is connected with his official work and has perhaps in great measure been acquired in the discharge of official duties.

“3. In a case in which an officer is required to use privately-acquired skill or knowledge which has no connection with his official work, there does not appear to the Governor-General in Council to be any objection to his retaining a fee, provided that the commission was accepted with the consent of his official superior and executed without detriment to, or delay in, his official duties. And even in cases falling under the second head above referred to, in which an officer is required to use knowledge which is connected with his official work, it has been customary in some Departments to allow Government servants to retain fees for executing commissions issued by Civil Courts. Thus the rule in the Public Works Department Code permits an officer of the Department,

Vide Chapter IV, para. 3, Note III. called upon by a Court to act as a commission to give reliable information on certain technical points of Engineering, to retain such fees as are fixed by the Court. In cases of this nature where the consent of the officer's official superior has been obtained, and where the additional duty in no way interferes with his regular work, the Government of India see no objection to his retaining the remuneration which, if not a Government servant, he would receive for his trouble. Cases of this sort, however, will obviously sometimes approximate to those in which an officer is called on to execute a commission in his capacity as a Government servant, and in such cases discrimination will have to be exercised in permitting fees to be retained. The Governor-General in Council is prepared to leave it to Local Governments to decide in any doubtful cases of this nature whether the fee should be credited to Government or not.”

APPENDIX S.

NOTE ON THE SUBJECT OF FINES.

[Referred to in note of clause 29 of the Charter, *ante*, p. 41.]

By section 53 of Geo. III, c. 155 [*which Statute was repealed as to a part by Act XXII of 1854, and as to the rest by the Criminal Procedure Code, X of 1872*], Magistrates in the provinces were required to transmit fines imposed on British subjects, less amount applied in satisfaction to the party aggrieved, to the Clerk of the Crown or other officer of the Supreme Court empowered to receive fines.

By 9 Geo. IV, c. 73, s. 74, provision is made for payment to the assignee of an insolvent's estate of fines imposed for certain offences whereby creditors of the estate have been defrauded or suffered loss.

By 9 Geo. IV, c. 74, s. 52 [*repealed by the High Courts' Criminal Procedure Act, X of 1875*], power was given to the Supreme Court to apply "*towards the reasonable costs of prosecuting offences, or of compensating prosecutors* [whether the prosecution be before the said Court or any Justice of the Peace], *any part of the whole sum arising out of fines levied by or transmitted to the said Courts* :—Provided always that no such allowance for costs or compensation shall be made, *except upon motion in open Court*; and that nothing herein contained shall prevent Justices of the Peace from making such allowances for costs or compensation to prosecutors as they might before have lawfully done."

By the Royal Letters Patent, dated 1st March 1851, a grant was made to the East India Company of all fines whether imposed "by the Supreme Court, or by any Court of Oyer and Terminer and Gaol Delivery or General Court of Quarter Sessions, or by any of the Justices of the Peace, Commissioners of Oyer and Terminer or Gaol Delivery for the Presidency of Fort William in Bengal, or any of them, or by any other Court of Justice, or by any other person or persons there having lawful authority to order, charge, adjudge, set, impose or award the same; *power being reserved to the Supreme Court to make such satisfaction to prosecutors of information or indictment as to the said Court shall seem reasonable and fit out of any fine or fines to be set or imposed upon any person or persons who shall be convicted upon such proceedings respectively. And we will and order that such fines shall be paid according to such order to be given by the said Court.*"—*Calcutta Gazette*, 31st May 1852.

By section 27 of 16 and 17 Vict., c. 95, dated 20th August 1853, all fines and penalties incurred by sentence of any Court of Justice within the territories of the East India Company were placed at the disposal of the Company in trust for Her Majesty for the service of the Government of India.

By the High Courts' Criminal Procedure Act, X of 1875, section 106, when the Court imposes a fine, it may order the whole or any part of it to be paid in compensation—

- (a) for expenses properly incurred on the prosecution;
- (b) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money; and it may, if it thinks fit, order such payments to be made for the benefit of the complainant, or the person injured, or both.

Similar power is given to the other Criminal Courts by the Criminal Procedure Code, X of 1872, section 308.

For the purpose of meeting sessions expenses, and awards to prosecutors, a sum of Rs. 5,000 was always retained in Court out of the fine fund, and the excess over that sum was, from time to time, on the application of the Advocate-General, transferred to Government.

App. B.

On the 24th of November 1855, the Accountant-General of Bengal wrote to the Comptroller-General of Accounts, suggesting that all fines, *less any sums awarded by order of the Court to prosecutors or informers*, should be paid direct to the revenue account, and that all sessions contingent expenditure should be paid out of grants to be made for that purpose.

On the 4th of December 1865, the Comptroller-General of Accounts addressed the Government of India on the subject, and submitted the following proposition:—

“Under the above Letters Patent, payments have been made from time to time by the officers of the Court (out of the fines realized) to the credit of Government, and have been treated in the public accounts as ‘Government receipts.’ Beyond this record, and the entries in the Police accounts of the fines levied and remitted, no information has been furnished to the Account Department relative to the disposal of the amounts which have been realized. No accounts of these fines have ever been rendered to Government, nor have the payments which have been made from them undergone any check in the Account Department. It is understood that the fines are partly appropriated to the payment of charges for preparing jury lists, summoning jurors, defending pauper cases, dieting witnesses, and other expenses connected with the sessions charges to which the Letters Patent already quoted have not apparently any reference.

“It seems desirable that some check should be exercised by Government over these receipts; and I would beg to suggest, for consideration, that it would be expedient that the gross amount of fines paid into the High Court, less awards to prosecutors, should be remitted to the General Treasury at the Bank for credit to Government, the several descriptions of charges enumerated in the preceding paragraph being annually provided for in the Budget prepared by the Accountant-General, High Court, and submitted for the sanction of Government.”

This correspondence was forwarded to the Court, with a letter from the Government of India, Home Department, No. 88, dated 5th January 1866, explaining that “*there is no intention on the part of the Government of disturbing existing arrangements as to the disposal of a portion of these fines under the orders of the Court, but only of requiring a periodical statement of the receipts and expenditure on this account.*”

The Court having communicated its concurrence in the proposition of the Comptroller-General, the following Resolution⁽¹⁾ was passed by the Government of India:—

“The Governor General in Council is pleased to direct that, in future, all Police fines, *less compensation awarded to prosecutors*, etc., be paid into the Government account at the

(¹) Financial Department, No. 13, dated 14th May, 1867.

Bank of Bengal, the Commissioner of Police, Calcutta, rendering monthly to the Accountant-General, Bengal, an account of the fines realized and the compensation awarded out of them.

“2. Fines imposed and realized by the High Court, *less awards to prosecutors*, etc., shall similarly be paid into the Bank to the credit of Government and accounted for to the Comptroller-General of Accounts, while the sessions expenses for preparation of jury lists, summoning jurors, defending pauper suits, dieting witnesses, etc., shall be met out of the budget grant for the High Court. In the event of the grant for the current year being insufficient to meet such expenses, a supplemental estimate of them may be submitted to Government by the High Court.

“3. These charges will be subject to the audit of the Government Auditor, in like manner with other expenditure of the High Court, and the Accountant-General to the Court will always retain in his hands a permanent advance of Rs. 500 (for which he will be responsible to Government) to meet any expenditure which must be incurred before his monthly contingent bills can be sent in.”

APPENDIX T.

PROCLAMATION, FIXING THE LIMITS OF CALCUTTA, ISSUED BY THE GOVERNOR GENERAL IN COUNCIL ON THE 10TH SEPTEMBER 1794.

[Referred to in the note to clause 11 of the Letters Patent, 1865, *ante*, p. 81.]

WHEREAS in and by the 159th section, chapter 52, of an Act passed in the 33rd year of His Majesty's reign, intituled: “An Act for continuing in the East India Company, for a limited time, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the Government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the town of Calcutta, Madras, and Bombay;”—It is enacted that “if any question shall arise touching or concerning the true limits and extent of the said towns and factories or any of them, the same shall be inquired into by the Governor General in Council at Fort William in respect to the limits and extent of Calcutta, and by the Governor in Council of Fort St. George in respect to the limits and extent of Madras, and the Governor in Council at Bombay in respect to the town of Bombay, and that such limits as the said respective Governments, by order in Council, shall declare and prescribe to be the limits of the said towns and factories respectively, shall be held, deemed, and taken

in law as the true limits of the same, any custom or usage to the contrary notwithstanding." And whereas such question, as in and by the said clause of the said Act is meant and referred to, has arisen and been made with respect to the limits of the said town of Calcutta, and the Governor General in Council, in pursuance of the authority vested in him by the said Act, has inquired into the same, and by an order duly made in Council has declared and prescribed the limit of the said town, and has directed and commanded the same to be publicly notified, in order that the said limits, so declared and prescribed, may be known to the inhabitants of the said town, and to all persons whom the same may in anywise concern,—*It is hereby publicly notified*, that the town of Calcutta, in respect to all legal intents and purposes, extends to, and is bounded by, the several lines, limits, and boundaries herein-after mentioned, and described, that is to say:—

The Northern Boundary is declared to commence, and does accordingly commence, on the west side of the River Hooghly at the Post or Mete No. 22, situated at the north point of Colonel Robertson's Garden, called Jackapore, immediately opposite to the mouth of the brook called Chitpore Nullah, or Baug Bazar Nullah, and the said northern boundary is from thence declared to continue, and is continued accordingly, by a line drawn across the river from the aforesaid point to the south corner of the mouth of the said nullah, unto the Post or Mete No. 1, near the foot of the Chitpore Bridge, and from thence by a line drawn eastward, and passing the south end of the said bridge to No. 2, and from thence, along the south side of the said nullah or brook, to the Post or Mete No. 3, and thence on to the Post or Mete No. 4, passing the Old Powder Mill Bazar, until it reaches the foot of the bridge leading to Dum-Dum, where the Post or Mete No. 5 is.

The Eastern Boundary is declared to commence, and does accordingly commence, at the said Post or Mete No. 5, and is declared to continue, and does accordingly continue, by a line traced along the west or inner side of the Maharatta Ditch or Entrenchment, and the east side of the road adjoining thereunto, until it reaches the Post or Mete No. 6, at the northern angle next to the road of an enclosure called Halsee Bagaun, which said Halsee Bagaun is included within the said town of Calcutta, and from the said northern angle by a line drawn eastward along the southern side of the ditch or trench, which encloses the said Halsee Bagaun to the Post or Mete marked No. 6, and from thence southward, along the western side of the said ditch or trench, to the Post or Mete also marked No. 6, and from the said last-mentioned post or mete, western along the northern side of the said ditch or trench until the said line reaches the Mark No. 7, where there is a thannah, and from the said last-mentioned post or mete, by a line drawn southward, and on the western side of the Mahratta Entrenchment and the eastern side of the Boytakhanah road,

as far as the remains of the said Mahratta Entrenchment are visible to the Post or Mete No. 8, at the corner of Rajah Ramlochan's Bazar, and of the road leading to Balleaghaut, immediately opposite to Narain Chatterjee's Road, and from the said last-mentioned Post or Mete No. 8, by a line continued in a southern direction passing through Mirzapore, and drawn along the eastern side of the Boytakhana Road, and leaving the Portuguese Burying-ground to the east until it reaches the Boytakhana Tree, where the two posts or metes, marked respectively Nos. 9 and 10, are fixed on each side of the road, opposite to the Bow Bazar Road and Boytakhana Bazar, and from the last-mentioned post or mete, marked No. 10, by a line drawn along the eastern side of the said Boytakhana Road to the Post or Mete No. 11, opposite to Gopee Baboo's Bazar, which bazar is situated between the Jaun Bazar and Dhurumtollah Roads, and from thence in the same direction until the said line reaches the Post or Mete No. 12, at the point or turning of the said road towards the west, leaving Dhee Sreerampore on the east, and thereby including within the limits of Calcutta the Protestant Burying-ground, Chowringhee, and the lands thereunto belonging called Dhee Birjee.

The Southern Boundary is declared to commence, and does accordingly commence, from the last-mentioned Post or Mete No. 12, and is declared to continue, and does accordingly continue, by a line drawn from thence to the westward, with a little inclination to the southward, along the southern side of the public road, excluding Dhee Chuckerbeer and including Bunneapokah, otherwise called Arreapokah, in Dhee Birjee, until the said line reaches the beginning of the Russapaglah Road immediately opposite to Chowringhee High Road, where the Post or Mete No. 13 is fixed, and from the said Post or Mete No. 13, by a line running to the westward along the southern side of the public road to the Post or Mete No. 14, fixed between the Tannah and the General Hospital, and passing on westerly to the Post or Mete No. 15, at the foot of Alipore Bridge, and excluding the General Hospital aforesaid the Hospital for Insanes, and the Hospital Burying-ground, situated in Dhee Bohanipore, and from thence and from the south side of the said Alipore Bridge, by a line drawn and continued along the south side of the nullah commonly called Talley's Nullah, at high-water mark, to the Post or Mete marked No. 16, and from thence passing the foot or south end of Surmon's Bridge, commonly called Kidderpore Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Watson's Dock, and to the Post or Mete marked No. 17, and then proceeding from east to west across the said River Hooghly to the south-east point of Major Kyd's Garden, and excluding the said garden and village of Sheebpore, at which point a Post or Mete marked No. 18 is directed to be fixed; and

App. T.

The Western Boundary is declared to commence, and does accordingly commence, at the said point where the said Post or Mete marked No. 18 is fixed, and is declared to continue, and does accordingly continue, from thence by a line drawn at lowwater mark along the western side of the said River Hooghly, but excluding the ghauts of Ramkissenpore, Howrah, and Sulkeah, where posts or metes are fixed, marked respectively Nos. 19, 20, and 21, until the said line reaches the northern point of Colonel Robertson's Garden or Jackapore aforesaid, where a post or mete is fixed marked No. 22, and immediately opposite to the Post or Mete No. 1 at Chitpore Bridge.

Declared and proclaimed by order of the Governor General in Council of Fort William in Bengal, this 10th day of September 1794.

E. HAY,

Secretary to the Government.

NOTIFICATION.

Extension of
local limits.

No. 4078-P.D.—The 15th October 1913.—In exercise of the power conferred by section 1 of the Indian Presidency Towns Act, 1815 (55 Geo. III, c. 84), as amended by section 64 of the Government of India Act, 1858 (21 & 22 Viet., c. 106), and by sub-section (2) of section 1 of the Government of India Act, 1912 (2 & 3 Geo. V, c. 6), and with the sanction of the Secretary of State for India in Council, the Governor in Council is pleased to extend the limits of the town of Calcutta, as fixed by Proclamation made by the Governor General in Council on the 10th September 1794, so as to include within the limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal the area occupied by the Alipore Jail and Bhowanipore Road, which is described in the Schedule appended to this notification.

SCHEDULE.

The proposed extension of the town of Calcutta includes the Bhowanipore Road with some adjacent land and the area occupied by the Alipore Jail and its garden.

The said extension is enclosed within a line or boundary, defined by iron posts or metes numbered consecutively from 0 to 69 inclusive. The said line or boundary commences from the post or mete numbered 0 situated at a point 7' 6" east of Fort William boundary pillar No. 29 on the south side of the Lower Circular Road, and then runs along the eastern side of Bhowanipore Road and the surplus land attached thereto *via* sts or metes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15. Up to post 17, the line running straight between post and st,

The post or mete 17 is situated on the Calcutta or north-east bank of Tolly's Nullah, and from this post the line crosses to post or mete 18 on the Alipore or south-west bank of the Nullah, the line between posts 17 and 18 lying parallel to and south-east of the Alipore Bridge.

From the post or mete 18 the line follows the Alipore bank of Tolly's Nullah *viâ* posts or metes 19, 20, 21, 22, 23, 24, 25 up to post or mete 26.

From the post or mete 26 on the bank of Tolly's Nullah the line runs along the northern boundary of the District Magistrate's premises *viâ* posts or metes 27, 28, 29, 30, 31, 32, 33, 34, 35 to post 36, thence along the western boundary of the same premises *viâ* posts or metes 37, 38, 39 to post or mete 40 and thence along the southern boundary of the premises *viâ* posts or metes 41, 42 to post or mete 43 on the bank of the Tolly's Nullah.

From the post or mete 43 the line runs along the bank of Tolly's Nullah *viâ* post or mete 44 to post or mete 45.

From the post or mete 45 the line runs along the northern edge of the masonry drain to post or mete 46 situated at the point where the said masonry drain passes out from the Magistrate's Court compound.

From the post or mete 46 the line runs along the outer side of the boundary wall of the Magistrate's Court premises, first northward to post or mete 47 and thence westward to post or mete 48.

From the post or mete 48 the line runs northward along the outer side of the eastern boundary wall of the Army Clothing Agency to the post or mete 49, and thence westward along the south side of the wall forming the northern boundaries of the Army Clothing Agency and the Alipore Police Hospital premises to the post or mete 50.

From the post or mete 50 the line runs north-west, first crossing the lane between the Jail wall and the Police Hospital and then following the Jail wall to post or mete 51, thence northward along the Jail wall to the post or mete 52 and thence westward to the post or mete 53 at the south-western corner of the old execution yard.

From the post or mete 53 the line follows the western boundary of the Jail premises *viâ* post or mete 54 to the post or mete 55, and then along the northern boundary of the Jail land (on the southern side of Jail lane) *viâ* post or mete 56 to post or mete 57.

From post or mete 57 the line runs northward across Jail lane to post or mete 58 and thence north-eastward across Reformatory Street to post or mete 59 on the south-western Alipore bank of Tolly's Nullah.

App. T, U.

From post or mete 59 the line runs to post or mete 60, crossing Tolly's Nullah parallel to and north-west of Alipore Bridge.

From post or mete 60 the line runs along the west side of Bhowanipore Road *via* posts or metes 61, 62, 63, 64, 65, 66, 67 to the post or mete 68 at the north-eastern corner of Military Station Hospital premises and then to the last post or mete 69 at a point 16 feet west of the Fort William boundary pillar No. 30 on the south side of Lower Circular Road.

A plan of the land may be inspected at the office of the Superintending Engineer, Presidency Circle, Imperial Secretariat Buildings, Government Place, West, Calcutta.

J. G. CUMMING,

Offg. Chief Secy. to the Govt. of Bengal.

NOTIFICATION.

24-Parganas.

No. 4092-P.D.—The 15th October 1913.—It is hereby notified for general information that the jail, hitherto known as the Alipore Central Jail, will henceforth be called the Presidency Jail, Calcutta, and the jail, now known as the New Central Jail at Kalighat, will be called the Central Jail, Alipore.

J. G. CUMMING,

Offg. Chief Secy. to the Govt. of Bengal.

APPENDIX U.

[Referred to in footnote to clause 32 of the Letters Patent of 1865, *ante*, p. 99.]

Note submitted to the Hon'ble the Chief Justice.

I have examined the records of this Court for several years and found that for over 50 years the Deputy Sheriff has acted as the Marshal of the Vice-Admiralty Court. He has always been independent of the Sheriff, save that when the services of an officer are required by the Marshal he has employed the Sheriff's Officers such officers being under his orders as Deputy Sheriff. The employment of these officers may or may not have been with the sanction of the Sheriff. There is nothing to show what, if any, arrangement has existed on this point between the Sheriff and the Marshal or whether any remuneration is given by the Marshal to the Sheriff's officers for services rendered to him. It is no part of the duty of the Sheriff's officers, as such, to do work for the Marshal and it is not improbable that some arrangement has existed and that some remuneration has been given by the Marshal to the officers employed by him.

The order of the Hon'ble Sir Richard Garth, dated 2nd July 1883, appointing the Deputy Sheriff for the time being to be the Marshal of the Vice-Admiralty Court appears to be

a recognition of the long established practice and there can be no doubt that from the date of that order the Deputy Sheriff has been and will continue, until further order, to be the Marshal of the Vice-Admiralty Court, now called the High Court as a Colonial Court of Admiralty.

The accounts of the Registrar in Admiralty show that the Marshal acts as such in his own right and independently of the Sheriff. These Accounts show that from the year 1858 the Marshal has paid into Court monies realised by him to the credit of the matters in which he has acted and that the Court has, out of the monies so paid in, made payments by cheques under orders of Court.

I have been unable to find the books of accounts prior to 1858. It is quite true that the Deputy Sheriff is appointed by the Sheriff; but, once so appointed, he becomes, by virtue of the order of the Hon'ble Sir Richard Garth, Marshal of the Vice-Admiralty Court, now the High Court as a Colonial Court of Admiralty.

The Sheriff is not entitled to the fees of the Marshal who is in no way, as Marshal, subject to the authority or the orders of the Sheriff. If the Sheriff desires to appropriate in whole or in part the fees of the Marshal he can only do so under a private arrangement entered into with the Deputy Sheriff—but if there is no such arrangement the Sheriff cannot claim the Marshal's fees or any part thereof as a matter of right.

The records show that the Marshal may by Deed appoint a Deputy to do all acts which the Marshal himself could do and perform. In the year 1864, Mr. Stephen Edward Collis, Marshal of the Vice-Admiralty Court, Calcutta, appointed Mr. Richard Francis Stack to be his Deputy in the office of Marshal of the Vice-Admiralty Court and empowered him "to act as his Deputy in the said office and to transact all the usual and necessary business which is usually done and appertains to his office of Marshal of the Vice-Admiralty Court of Calcutta, and for the Marshal and in his name to sign, seal and execute all warrants, decrees, monitions or orders of the Vice-Admiralty Court and to make due return thereof and to nominate and appoint Clerks and Bailiffs, Appraisers and Auctioneers and give receipts for all monies whatsoever to be received and collected in the office of the said Marshal," etc., etc. These deeds of deputation appear to have been frequently executed by the Marshal. The warrants of the Admiralty Court directed to the Marshal have been addressed and are still addressed to the Marshal and his Deputies. On the question that has arisen between the late Sheriff and the Marshal, there is no doubt that the latter is entitled, in the absence of any private arrangement between him and the Sheriff, to the fees payable to the Marshal.

The Sheriff in his letter, dated 9th January 1911, to Mr. Pugh, refers to the order of Sir Richard Garth, dated 2nd July

App. U.

1883, appointing the Deputy Sheriff for the time being to be the Marshal of the Vice-Admiralty Court and enquires under what circumstances the order was made, whether it is a permanent order (meaning probably an irrevocable order), and whether Sir Richard Garth could by his order bind his successors. The order on the face of it shows that it is not irrevocable. It is as follows:—“*Until further order* I do hereby appoint the Deputy Sheriff for the time being to be the Marshal of the Vice-Admiralty Court.”

It was open to the then Chief Justice, Sir Richard Garth, to pass another order which would have the effect of revoking his order of 2nd July 1883 and it was and is open to any succeeding Chief Justice to make any other order His Lordship may be pleased to make.

W. R. FINK,

Registrar.

2nd February, 1911.

ADMIRALTY RULES.(C)

AT THE COUNCIL CHAMBER, WHITEHALL.

The 16th day of December, 1911.

PRESENT :

HIS ROYAL HIGHNESS PRINCE ARTHUR OF CONNAUGHT
ARCHBISHOP OF CANTERBURY LORD CHANCELLOR
LORD PRESIDENT.

Prime Minister .	Earl Beauchamp.
Master of the Horse	Lord Emmott.

WHEREAS His Majesty was pleased by His Commission dated the 10th day of November, 1911, to nominate and appoint His Royal Highness Prince Arthur of Connaught, K.G., G.C.V.O., His Grace the Lord Archbishop of Canterbury, G.C.V.O., the Lord High Chancellor of Great Britain, and the Lord President of the Council, or any two of them, in His Majesty's absence from the United Kingdom to summon and hold on His Majesty's behalf His Privy Council and to signify thereat His Majesty's approval of any matter or thing to which His Majesty's approval in Council is required :

And whereas there were this day read at the Board certain Rules made by the Honourable Judges of the High Court of Judicature at Fort William in Bengal under section 7 of the Colonial Courts of Admiralty Act, 1890, for regulating the Procedure and Practice in cases brought before the said High Court under the said Act :

NOW, THEREFORE, His Royal Highness Prince Arthur of Connaught, His Grace the Lord Archbishop of Canterbury, the Lord High Chancellor of Great Britain, and the Lord President of the Council, being authorised thereto by His Majesty's said Commission, have taken the said Rules (a copy whereof is hereunto annexed) into consideration and do hereby, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf, approve the same.

ALMERIC FITZROY.

(1) See note to cl. 32 of the Letters Patent of 1865, *ante*, page 97. See also correspondence with the Government of India and copy correspondence between the Secretary of State and Government of India ending with letter No. 391, dated 21st February 1912, from the Home Department, from which it will appear that no declaration has been made by His Majesty in Council under cl. 2 of s. 7 of the Colonial Courts of Admiralty Act, 1890 (53 and 54 Vict., c. 27) that any of the Rules may be revoked, varied, or added to without the approval required by that section. It will therefore be necessary to obtain such sanction to any alteration to these Rules.

RULES REFERRED TO IN THE FOREGOING ORDER IN COUNCIL.

RULES

For regulating the procedure and practice in cases brought before the High Court of Judicature at Fort William in Bengal under the Colonial Courts of Admiralty Act, 1890.

Meanings of certain terms used in these rules.

1. In the construction of these rules the following terms shall (if not inconsistent with the context or subject matter) have the respective meanings hereinafter assigned to them ; that is to say :—

“ The Court ” shall mean the High Court of Judicature at Fort William in Bengal.

“ Judge ” shall mean a Judge of the said Court.

“ Registrar ” shall mean the Registrar of the said Court, on its original side, or other officer authorised to perform the duties of such Registrar.

“ Registry ” shall mean the office of the Registrar.

“ Marshal ”⁽¹⁾ shall mean the Marshal or his substitute or substitutes or other officer who may be appointed by the Chief Justice to execute the process of the Court.

“ Attorney ” shall mean any Attorney entitled to practise in the said Court, or the party himself if conducting his suit in person.

“ Suit ” shall mean any suit, action, or other proceeding instituted in the said Court in its jurisdiction under the Colonial Courts of Admiralty Act.

“ Affidavit ” shall, in addition to its ordinary meaning, include a statement in writing on solemn affirmation wherever by law a person may make a solemn affirmation instead of an oath.

Operation of the rules.

2. These rules shall, if previously approved by His Majesty in Council, come into operation on a day to be fixed by the Court and shall apply to all suits instituted on and after that day.

The Rules were gazetted on 27th April 1912 and came into force on 1st June 1912.

Institution of suits.

3. A suit shall be instituted by a plaint drawn up, subscribed and verified according to the provisions of the Code of Civil Procedure, save that if the suit is *in rem* the defendants may (subject to such variation as the circumstances may require) be described as “ the owners and parties interested in ” the vessel or other property proceeded against instead of by name.

(¹) See note in Appendix U, *ante*.

4. In suits *in rem* a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the suit has been instituted, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with :—

Arrest warrant after affidavit

- (a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied.
- (b) In a suit of wages or of possession the affidavit shall state the national character of the vessel proceeded against ; and if against a foreign vessel, that notice of the institution of the suit has been given to the Consul of the State to which the vessel belongs, if there be one resident in Calcutta and a copy of the notice shall be annexed to the affidavit.
- (c) In a suit of bottomry the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct shall be annexed to the affidavit.
- (d) In a suit of distribution of Salvage the affidavit shall state the amount of Salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same.

5. The Court or a Judge may in any case, if they or he thinks fit, allow the warrant to issue, although the affidavit in rule 4 mentioned may not contain all the required particulars, and in a suit of wages the Court or Judge may also waive the service of the notice, and in a suit of bottomry the production of the bond.

Warrant may issue before affidavit by leave.

6. In suits *in rem* no service of writ or warrant shall be required when the attorney of the defendant waives service and undertakes in writing to appear and to give security or to pay money into Court in lieu of security.

Suits in rem. When service not required.

7. An attorney not entering appearance or giving security or paying money into Court in lieu of security in a suit *in rem* in pursuance of his written undertaking so to do shall be liable to attachment.

Attorney not entering appearance.

8. Every writ, warrant and process shall be served by the Marshal or his substitute. Every warrant shall be returned to the Registry within six days from the date thereof.

Service. By whom made.

9. In suits *in rem* service of summons or warrant against ship, freight or cargo on board, is to be effected by nailing or affixing the

Service. How effected.

original writ or warrant for a short time on the main mast or on the single mast of the vessel and by taking off the process, leaving a true copy of it nailed or affixed in its place.

Service how
effected on
cargo landed.

10. If the cargo has been landed or transhipped, service of the writ or warrant to arrest the cargo and freight shall be effected by placing the writ of summons or warrant for a short time on the cargo and by, on taking off the process, leaving a true copy upon it.

Service on cargo
in custody of
third party.

11. If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

Intervening in
suits *in rem*.

12. In a suit *in rem* any person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the property under arrest or in the fund in the Registry.

Suits *in rem*
by default.

13. After the expiration of 12 days from the return of a warrant, if no appearance shall have been entered in the suit, the attorney for the plaintiff may cause the suit to be sent down for hearing.

Judgment for
the claim if
well founded.

14. If when the suit comes before the Court, the Judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim and may order the property to be sold with or without previous notice and the proceeds paid into the Registry or may make such order in the premises as he shall think just.

Entry of ap-
pearance.

15. An attorney desiring to enter an appearance in any suit, shall file in the Registry a *præcipe*, a copy of which shall have been previously served on the adverse attorney.

Contents of
præcipe.

16. The *præcipe* shall contain the name of the attorney and an address in Calcutta at which it shall be sufficient to leave all instruments and documents in the suit.

Security.

17. Where security is to be given in the Registry, it shall be given according to the rules and practice of the Court as to security in the case of an attachment before judgment in an ordinary Civil suit.

Release.

18. Property arrested by warrant shall only be released under the authority of an instrument issued by the Registrar, to be called a "release."

Release before
appearance
entered on
præcipe.

19. An attorney at whose instance any property has been arrested may, before an appearance has been entered, obtain the release thereof by filing a *præcipe* to withdraw the warrant.

On payment
into Registry
release of pro-
perty.

20. An attorney may obtain the release of any property by paying into the Registry the sum in which the suit has been instituted.

Release of cargo
arrested for
freight, on
payment.

21. Cargo arrested for the freight only, may be released by an order of a Judge in Chambers upon proof by affidavit of the value of the freight and by paying the amount of the freight into the Registry.

22. In a suit of salvage the value of the property under arrest shall be agreed to or proved by affidavit to the satisfaction of a Judge in Chambers before the property is released.

Value of property under arrest in suit.

23. Where security shall have been given in the sum in which the suit has been instituted or such sum shall have been paid into the Registry, and if the suit be one of salvage the value of the property arrested shall have been proved to the satisfaction of a Judge in Chambers, an attorney shall be entitled to a release for the same, unless there be a Caveat against the release thereof outstanding in the "Caveat Release Book."

On security or payment into Registry property arrested released.

24. The release, when obtained, shall be left with a præcipe in the office of the Marshal by the attorney taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest, and the Marshal shall thereupon release the property.

Release by Marshal on lodging præcipe with release.

25. An attorney in a suit desiring to prevent the release of any property under arrest, shall file in the Registry a præcipe, and thereupon a Caveat against the release of the property shall be entered in a book to be kept in the Registry called the "Caveat Release Book."

Caveat against release.

26. A party delaying the release of any property by the entry of a Caveat shall be liable to be condemned in cost and damages, unless he shall show, to the satisfaction of the Court or a Judge, good and sufficient reason for having so done.

Penalty for delaying release.

27. The party desiring to prevent the arrest of any property may cause a Caveat against the issue of a warrant for the arrest thereof to be entered in the Registry.

Caveat against arrest of warrant.

28. For this purpose he shall cause to be filed in the Registry a notice, signed by himself or his attorney, undertaking to enter an appearance in any suit that may be instituted against the said property, and to give security in such suit in a sum not exceeding an amount to be stated in the notice, or to pay such sum into the Registry, and a Caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry called the "Caveat Warrant Book."

Caveat Warrant Book.

29. Before issuing a warrant for the arrest of the property, the Registrar shall ascertain whether or not any Caveat has been entered against the issue of a warrant for the arrest thereof.

Search for Caveat before issue of Arrest Warrant.

30. An attorney instituting a suit against any property in respect of which a Caveat has been entered in the Caveat Warrant Book shall forthwith serve a copy of the plaint upon the party on whose behalf the Caveat has been entered or upon his attorney.

Service of plaint on party entering Caveat.

31. Within three days from the service of a copy of the plaint the party on whose behalf the Caveat has been entered shall, if the sum in which the suit has been instituted does not exceed the

Security.

amount for which he has undertaken, give security in such sum or pay the same into the Registry, or if it exceeds that amount give security in the sum in which the suit has been instituted or pay the same into the Registry.

On default, suit may proceed.

32. After the expiration of twelve days from the service of a copy of the plaint, if the party on whose behalf the Caveat has been entered shall not have given security in such sum, or paid the same into the Registry, the plaintiff's attorney may proceed with the suit by default, and have it heard: Provided that the Court may on good cause shown and on such terms as to payment of costs as it may impose, extend the time, for giving security or paying the money into the Registry.

Judgment for claim, enforcement of payment.

33. If when the suit comes before the Court it is satisfied that the claim is well-founded, it may pronounce for the amount which appears to be due, and may enforce the payment thereof by order and attachment against the party on whose behalf the Caveat has been entered, and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

Notwithstanding Caveat property may be arrested.

34. The preceding rules shall not prevent an attorney from taking out a warrant for the arrest of any property, notwithstanding the entry of a Caveat in the "Caveat Warrant Book," but the party at whose instance any property in respect of which a Caveat is entered shall be arrested, shall be liable to be condemned in costs and damage, unless he shall show, to the satisfaction of the Court, good and sufficient reason for having so done.

Sales by order of the Court.

35. Every sale under the decree of the Court shall, unless the Judge shall otherwise order, be made by the Marshal in like manner as a sale of moveable property in execution of a decree in an ordinary Civil suit.

Procedure by Marshal on sale of property.

36. The Marshal shall pay into Court the gross proceeds of sale of any property sold by him, and shall at the same time bring into the Registry the Account of Sale, with vouchers in support thereof, for taxation by the Taxing Officer of the Court, to whom the same shall be transmitted by the Registrar for that purpose.

Audience before Taxing Officer.

37. Any person interested in the proceeds, may be heard before the Taxing Officer on the taxation of the account of expenses and an objection to the taxation shall be heard in the same manner as an objection to the taxation of an attorney's bill of costs.

Payment of monies.
Payment out of monies.

38. All money paid into Court shall be paid to the Registrar.

39. Money paid into Court shall not be paid out of Court, except in pursuance of an order of the Court or a Judge.

Security for latent debt

40. Security for latent demands shall not, unless the Judge shall otherwise order, be required on the payment of money out of Court.

41. An attorney desiring to prevent the payment of monies out of the Registry shall file a notice and thereupon a Caveat shall be entered in a book, to be kept in the Registry called the "Caveat Payment Book." Notice against payment. Caveat Payment Book.

42. Applications may be made either in Court or to a Judge in Chambers. Applications.

43. Forms of *præcipes* required to be filed in the Registry or the Marshal's office may be obtained on application in the Registry. They may be varied or altered by a Judge at his discretion. Præcipe.

44. Every *præcipe* shall be signed either by the party or by his attorney. Signature to Præcipe.

45. If a *præcipe* be not properly filled up, the Registrar or the Marshal, as the case may be, may refuse to receive the same or to act thereon. Improperly filled up præcipe.

46. A Caveat, whether against the issue of a warrant, the release of property, or the payment of money, out of the Registry, shall not remain in force for more than six months from the day of the date thereof. Caveats to be in force for six months.

47. A Caveat may be withdrawn by the party on whose behalf it has been entered or by his attorney; but the *præcipe* to lead the withdrawal thereof shall, save by permission of the Registrar, be signed by the person who signed the *præcipe* to lead the entry of the Caveat. Withdrawal of Caveat.

48. Application may be made to the Court on motion or to a Judge in Chambers, by summons to over-rule any Caveat. Application to over-rule a Caveat.

49. The fees of Court and the fees to be allowed to the attorneys shall be those set out in the tables of fees sanctioned for proceedings under the Original Civil Jurisdiction of the High Court. The fees to be taken by the Marshal shall be those set forth in the Schedule hereto. Fees.

50. The forms used in the Admiralty Division of the Supreme Court in England under the rules of the Supreme Court, in 1883, shall be followed as nearly as the circumstances of each case will allow. Forms of Admiralty Division to be followed.

51. Where no other provision is made by these rules proceedings in suits brought in the Court in the exercise of its jurisdiction under the Colonial Courts of Admiralty Act, 1890, shall be regulated by the rules and practice of the Court in suits brought in it in the exercise of its ordinary Original Civil Jurisdiction. Where other provision not made rules of practice of Ordinary Original Civil Jurisdiction to apply.

Special summary procedure.

52. The parties to any suit may have the same dealt with, heard and determined in accordance with the following special rules upon filing in the Registry a consent signed by the parties or their attorneys duly authorised in that behalf in the form given below. Summary procedure—by consent.

Application to fix hearing and give directions.

53. After such consent has been filed application may be made by any party to the Judge in Chambers to appoint a day for the hearing, and to give directions.

No pleadings.

54. There shall be no pleading beyond a statement of claim verified by affidavit, but if there be a counter-claim notice thereof shall be given in writing before such consent as aforesaid is signed.

List of documents. Inspection.

55. List of documents shall be exchanged and mutual inspection of documents given at or before a time appointed by the Judge on the hearing of the application aforesaid.

Hearing of application.

56. At the hearing of the application aforesaid, unless it shall sufficiently appear from the statement of claim or otherwise in writing, the plaintiff shall specify the cause or causes of action in respect of which the suit is brought, and, if practicable, the amount actually claimed, and the defendant shall specify the grounds of defence on which he relies and in salvage claims, the plaintiff and defendant respectively shall at the same time, or within such time as the Judge shall direct, state the values of their property and, if required, by affidavit. In the case of a counter-claim the cause or causes of action and the claim therein and grounds of defence thereto shall be similarly stated.

Evidence.

57. The Judge shall be at liberty to receive, call for, and act upon, such evidence, documentary or otherwise, whether legally admissible or not, as he may think fit.

Costs.

58. If in any suit the sum awarded, or for which judgment is given, exceeds the sum, if any, tendered, the Judge may nevertheless exercise his discretion as to how and by whom the costs shall be borne.

Appeal.

59. There shall be no appeal from any order or judgment of the Judge except on a question of law, and then only by his leave.

In other respects ordinary rules apply.

60. In other respects the ordinary rules and practice shall apply so far as may be necessary. Notwithstanding anything in these special rules, the Judge may, if he thinks fit, make such orders as he might make under the ordinary rules and practice.

Supersession of former rules.

61. The foregoing rules shall apply to suits brought in the Court in the exercise of its Admiralty Jurisdiction in supersession of all former rules.

L. JENKINS.
R. HARRINGTON.
H. L. STEPHEN.
JOHN G. WOODROFFE.
ASHUTOSH MUKERJI.
C. P. CASPERSZ.
H. HOLMWOOD.
C. W. CHITTY.

E. E. FLETCHER.
S. SHURF-UD-DIN.
H. R. H. COXE.
H. W. C. CARNDUFF.
DIGAMBAR CHATARJI.
NALINI RANJAN CHATARJI.
W. TEUNON.

These Rules shall come into operation on the 1st day of June 1912.

By order of the Full Court.

J. H. HECHLE,
Registrar, High Court, Original Side.

Form of Consent to the application of the Summary Procedure.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

(AS A COLONIAL COURT OF ADMIRALTY.)

Between

and

Plaintiff.

Defendant.

We the undersigned respectively hereby agree that this cause shall be dealt with, heard and determined according to the Summary Procedure.

Dated this day of 19 .

Plaintiff's Attorney.

Defendant's Attorney.

NOTE.—As the above-mentioned Rules depart from the ordinary rules and practice it will be necessary for attorneys signing this consent to obtain their clients' authority to do so.

Schedule of Fees and charges to be allowed to the Marshal.

	<i>Rs. n. p.</i>
1. For serving every writ of summons including Bailiff's charge for serving same and making affidavit	10 0 0
2. For every search of service of summons or other process	1 0 0
3. For every ordinary return	1 0 0
4. For every special return	2 0 0
5. For translation when necessary per folio	0 8 0
6. For arresting a vessel or goods or person or on the execution of other warrant including Bailiff's charge for executing same	32 0 0
7. For serving every notice and other judicial process not specified in this schedule for each person served including Bailiff's charge for serving same	5 0 0
8. On the execution of any decree order commission or other instrument not specially mentioned in this schedule	15 0 0

	Rs.	a.	p.
9. On attending, appointing and swearing appraisers .	15	0	0
10. On delivering up a ship or goods to a purchaser agree- ably to the inventory	15	0	0
11. On attending the delivery of cargo or sale or removal of a ship of goods per day	32	0	0
12. On retaining possession of a ship with or without cargo, or of a ship's cargo without a ship, to in- clude the cost of a ship keeper, if required, per day	4	8	0
13. If the Marshal or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he shall be entitled to his reasonable expenses for travel- ling, board, and maintenance, in addition to the above fees.			
14. On the sale of any vessel or goods sold pursuant to a decree or order of the Court or on money realised in execution for every Rs. 750 or fraction of Rs. 750 realised	7		0
15. For release of a vessel, goods or person from arrest .	5		0
16. For every certificate of seizure	5		0
17. For every other certificate	2		0

No. 1.

Writ of Summons in Admiralty Suits in Rem. (Rules 8 and 51.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff.

Defendant.

GEORGE V, *by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.*

To

The owners and parties interested in the Ship or Vessel
of the port of (or cargo and

Greeting : whereas (*enter the name, description and address of the Plaintiff*) has instituted a suit in this Court against you (*set out concise statement as appearing in the Plaint*) you are hereby required to cause an appearance to be entered for you in the Registry (i.e., the office of the Registrar of this Court on its Original Side) within days from the service upon you of this summons, exclusive of the day of such service ; and are summoned to appear before this Court in person or by an Advocate duly instructed by an attorney of the Court to answer the Plaintiff's claim on the day the case is set down for hearing, upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case ; and you are hereby required to take notice that in default of your causing an appearance to be so entered, the suit will be liable to be heard and determined in your absence.

Plaint filed
101

Summary 191

The defendant required by the Court to file written statement within 10 days from the date of service upon this writ.

Registrar.

Attorney.

NOTE 1.—An appearance in person or through attorney is to be entered in the Registry, within the time limited. In default thereof, the suit will be liable to be heard *ex parte*.

NOTE 2.—The written statement called for must be filed within the time limited, the defendant having first entered an appearance. In default thereof the suit will be liable to be heard *ex parte*.

NOTE 3.—This writ must be returned to the High Court immediately after the service thereof, or, if not served and the time for the return thereof shall not have been extended on the _____ day of _____ next.

NOTE 4.—Should you apprehend your witnesses will not attend of their own accord you can have subpoenas from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, and on payment to them of the fees and expenses prescribed by the Rules of this Court.

NOTE 5.—If you admit the demand you should pay the money into Court with the costs of the suit to avoid sale of any property in respect of which the suit is brought or execution of the decree which may be against your person or property, or both.

Præcipe for Warrant. (Rule 4.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

Plaintiff.

Defendant.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

I, _____, attorney for the
(state whether plaintiff or defendant), pray a warrant to arrest (state
name and nature of property).

Dated the day of 191 .

(To be signed by the attorney.)

FORM No. 3.

Warrant of Arrest in Admiralty Suit in Rem. (Rule 4.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff

and

Defendant.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

To the Marshal

We hereby command you to arrest the Ship or Vessel
of the port of (and the cargo and freight, etc., as the
case may be) and to keep the same under safe arrest, until you shall
receive further orders from us.

Witness, etc.,

No. 4.

**Præcipe for service by the Marshal of any Instrument in Rem.
other than a Warrant. (Rule 8.)**

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff.

Defendant.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

I, _____ attorney for the (state whether
plaintiff or defendant) pray that the (state nature of instrument)
 left herewith be duly executed.

Dated the day of 19 .

(To be signed by the attorney.)

No. 5.

Præcipe for Appearance. (Rule 15.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff.

Defendant.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

**Enter an appearance for
in this suit.**

Dated the day of 19

(Signed.)

whose address for service is

Attorney for the said defendant.

Præcipe for Release. (Rules 19 and 24.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

Plaintiff.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

Dated the day of 19 .

(To be signed by the attorney.)

Release. (Rule 18.)

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

GEORGE V, by the Grace of God of the United Kingdom of Great Britain and Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.

Greeting : whereas in a suit of
commenced in our said High Court on behalf of
against we did com-

mand you to arrest the said _____ and
 to keep the same under safe arrest until you should receive further
 orders from us. Now we do hereby command you to release the
 said _____ from the arrest
 effected by virtue of our warrant in the said suit, upon payment
 being made to you of all costs, charges and expenses attending the
 care and custody of the property whilst under arrest in that suit.

Witness, etc.

Release

Taken out by _____ on the _____ day of _____
 19 _____ the _____ or vessel _____
 (or cargo and freight, etc., as the case may be) released from arrest
 pursuant to this instrument of release.

No. 8.

Præcipe for Caveat Release. (Rule 25.)

SUIT No. _____ OF 191 _____

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
 BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff.

Defendant.

GEORGE V, by the Grace of God of the United Kingdom of Great
 Britain and Ireland, and the British Dominions beyond the Seas,
 King, Defender of the Faith, Emperor of India, and so forth.

I, _____ attorney for
 the plaintiff in this action pray a caveat against the release of the
 (state name and nature of the property)

Dated the _____ day of _____ 19 _____

(To be signed by the attorney.)

No. 9.

Præcipe for Caveat Warrant. (Rule 28.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

*Plaintiff.**Defendant.*

GEORGE V, *by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.*

I (*state name, address and description*) hereby undertake to enter an appearance in any suit that may be commenced in this Hon'ble Court against (*state name and nature of the property*) and within three days after I shall have been served with a copy of the plaint in such suit to give bail therein in a sum not exceeding (*state amount for which the undertaking is given*) Rupees, or to pay such sum into the Registry. And I consent that all instruments and other documents in such suit may be left for me at

Dated the day of 191 .

(To be signed by the attorney.)

No. 10.

Præcipe for Caveat Warrant by Plaintiff. (Rule 28.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

*Plaintiff.**Defendant.*

GEORGE V, *by the Grace of God of the United Kingdom of Great Britain and Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.*

I (*state name, address and description*) hereby undertake within three days after I shall have been served with a notice of any counter-claim herein in respect of which the defendant is entitled to arrest (*state name and nature of property*) to give bail to answer such counter-claim in a sum not exceeding (*state amount for which the undertaking is given*) Rupees or to pay such sum into the Registry.

Dated the day of 19

(*To be signed by the attorney.*)

No. 11.

Præcipe to withdraw Caveat. (Rule 47.)

SUIT No. OF 191 .

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.

ADMIRALTY JURISDICTION.

Plaintiff.

Defendant.

GEORGE V, *by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, and so forth.*

I, attorney for the
(*state whether plaintiff or defendant*), pray that the caveat against
(*state tenor of caveat*), entered by me on the day of
19 on behalf of (*state name*) may be withdrawn.

Dated the day of 19 .

(*To be signed by the person by whom the præcipe for the entry of the caveat was signed.*)

INSOLVENCY RULES.

**GENERAL RULES, MADE BY THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL, UNDER THE PRESIDENCY TOWNS
INSOLVENCY ACT III OF 1909.⁽¹⁾**

PRELIMINARY.

1. These rules may be cited as "The Calcutta Insolvency Rules, 1910." They shall come into operation on the 1st January 1910, and shall, so far as practicable, apply to all matters arising, and to all proceedings taken in any matters under the Act. Short title and commencement

2. In these rules, unless the context or subject-matter otherwise requires— Interpretation of terms.

(a) "The Act" means the Presidency Towns Insolvency Act, 1909.

"The Court" includes the Registrar when exercising the powers of the Court pursuant to the Act, or these Rules.

"Creditor" includes a Corporation or firm of creditors in partnership.

"Debtor" includes a firm of debtors in partnership, and includes any debtor proceeded against under the Act, whether adjudged insolvent or not.

"Judge" means the Judge of the High Court to whom the Insolvency business is for the time being assigned, under Section 4 of the Act.

"Registrar" means the Registrar in Insolvency of the High Court.

"Scheme" means a scheme of arrangement pursuant to the Act.

"Sealed" means sealed with the seal of the Court.

"Taxing Officer" means and includes the Officer of the Court whose duty it is to tax costs in Insolvency proceedings.

"Writing" includes print and "written" includes printed.

(b) Words importing the plural number include the singular, and words importing the singular number include the plural, and words importing the masculine gender include feminine.

(c) The provisions of Section 2 of the Act shall apply to these Rules, and any other terms or expressions defined by the Act, shall, in these Rules, have the meanings thereby assigned to them.

⁽¹⁾ See s. 113 of the Act by which Rules made under the Act require the sanction of the Governor General in Council and by s. 114 must be gazetted.

Computation of time.

3. Where by the Act or these Rules the time limited for doing any act or thing is less than six days any day on which the offices of the Court are wholly closed shall be excluded in computing such time.

Forms.

Use of forms in Appendix.

4. The forms in the Appendix, where applicable, and where they are not applicable, forms of a like character with such variations as circumstances may require shall be used. Where such forms are applicable, any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

PART I.

COURT PROCEDURE.

Court and Chambers.

Matters to be heard in Court.

5. The following matters and applications shall be heard and determined in open Court, namely :—

- (a) The public examination of debtors.
- (b) Applications to approve a composition or scheme of arrangement.
- (c) Applications for orders of discharge.
- (d) Applications to set aside or avoid any settlement, conveyance, transfer, security or payment, or to declare for or against the title of the Official Assignee to any property adversely claimed.
- (e) Applications for the committal of any person to prison for contempt.
- (f) Appeals against the rejection of a proof or applications to expunge or reduce a proof, where the amount in dispute exceeds Rs. 2,000.

Any other matter or application may be heard and determined in Chambers.

Jurisdiction of the Registrar.

6. The Registrar may, under the general or special directions of the Chief Justice, hear and determine any matter or application mentioned in Sub-Section (2) of Section 6 of the Act.

Adjournment from Registrar to Judge.

7. Any matter or application pending before the Registrar which the Registrar has jurisdiction to determine, shall be adjourned to be heard before the Judge if the Judge shall so direct.

Adjournment from Chambers to Court and vice versa.

8. Subject to the provisions of the Act and these Rules, any matter or application may at any time, if the Judge or (as the case may be) the Registrar thinks fit, be adjourned from Chambers to

Court, or from Court to Chambers, and if all the contending parties require any matter or application to be adjourned from Chambers into Court, it shall be so adjourned.

Proceedings.

9. (1) Every proceeding in Court under the Act shall be dated, and shall be intituled "In Insolvency," with the name of the Court and of the matter to which it relates. Numbers and dates may be denoted by figures. Proceedings how intituled

(2) All applications and orders shall be intituled *ex parte* the applicant.

(3) The first proceeding in every matter shall have a distinctive number assigned to it by the Registrar, and all subsequent proceedings in the same matter shall bear the same number.

(4) The Forms in the Appendix shall be used, with such variations or additions as circumstances may require.

10. All proceedings in Court shall be written or printed, or partly written and partly printed, on paper of the size hitherto used in insolvency. Written or printed proceedings.

11. All proceedings of the Court shall remain of record in the Court, so as to form a complete record of each matter, and they shall not be removed for any purpose, except for the use of the officers of the Court, or by special direction of the Judge or the Registrar; but they may at all reasonable times be inspected by the Official Assignee, the debtor, and any creditor who has proved, or any person on behalf of the Official Assignee, debtor, or any such creditor. Records of Court.

12. All notices required by the Act or these Rules shall be in writing, unless these Rules otherwise provide, or the Court shall in any particular case otherwise order. Notices to be in writing.

13. All summonses, petitions, notices, orders, warrants, and other process issued by the Court shall be sealed. Process to be sealed.

14. Where the Court orders a general meeting of creditors, it shall be summoned as the Court directs, and in default of any direction by the Court, the Registrar shall transmit a sealed copy of the order to the Official Assignee; and the Official Assignee shall, not less than seven days before such meeting, send a copy of the order to each creditor at the address given in his proof, or when he shall not have proved, the address given in the schedule of creditors by the debtor, or such other address as may be known to the Official Assignee. Meetings summoned by Court.

15. All office copies of petitions, proceedings, affidavits, books, papers, and writings, or any parts thereof required by the Official Assignee, or by any debtor, or by any creditor, or by the attorney of the Official Assignee, or of any such debtor or creditor, shall be pro-

vided by the Registrar ; and shall, except as to figures, be fairly written at length and be delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

Filing memorandum of Gazetting.

16. The Registrar shall file a copy of each issue of the *Gazette of India* and of the *Calcutta Gazette*, and whenever the Gazette contains any advertisement relating to any matter under the Act, the Registrar shall file with the proceedings in the matter a memorandum referring to and giving the date of such advertisement. The memorandum of the Registrar shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette mentioned in it.

Motions and Practice.

Applications to be by motion.

17. Every application to the Court (unless otherwise provided by these Rules, or the Court shall in any particular case otherwise direct) shall be made by motion supported by affidavit.

Notice of motion and *ex parte* application.

18. Where any party other than the applicant is affected by the motion, no order shall be made unless upon the consent of such party duly shown to the Court, or upon proof that notice of the intended motion and a copy of the affidavits in support thereof have been duly served upon such party : provided that the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs, and otherwise, and subject to such undertaking, if any, as the Court may think just ; and any party affected by such order may move to set it aside.

Length of notice.

19. Unless the Court gives leave to the contrary, notice of motion shall be served on the party to be affected thereby not less than four clear days before the day named in the notice for hearing the motion. An application for leave to serve short notice of motion shall be made *ex parte*, and the fact that short notice has been allowed shall be stated in the notice of motion.

Affidavits against motion.

20. Where a respondent intends to use affidavits in opposition to a motion, he shall deliver copies of such affidavits to the applicant not less than two days before the day appointed for the hearing.

Notice not served on all proper parties.

21. If on the hearing of any motion or application the Court shall be of opinion that any person to whom notice has not been given ought to have, or ought to have had, such notice, the Court may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given, upon such terms as the Court shall think fit.

Adjournment.

22. The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court shall think fit.

23. In cases in which personal service of any notice of motion or of any order of the Court, is required the same shall be effected, in the case of a notice of motion, by delivering to each party to be served a copy of the notice of motion ; and in the case of an order, by delivering to each party to be served a sealed copy of the order.

24. Every affidavit, to be used in supporting or opposing any opposed motion, shall be filed with the Registrar not later than 4 o'clock on the day before the day appointed for the hearing.

Filing affidavits on motion.

25. The Registrar, upon any affidavit being left with him to be filed, shall indorse the same with the day of the month and year when the same was so left, and forthwith file the same with the proceedings to which the same relates, and any affidavit left with the Registrar to be filed shall on no account be delivered out to any person, except by order of the Court.

Indorsement and filing of affidavits.

26. A party intending to move shall, not later than 4 o'clock on the day previous to the day appointed for the hearing, deliver to the Registrar a copy of his notice of motion. There shall be indorsed on such copy the name of the applicant's attorney (if any). Every notice of motion shall be entered by the Registrar in a list for hearing on the day appointed in such notice.

Notice of motion to be filed.

27. Except in cases of emergency, or for any other cause deemed sufficient by the Court, all motions shall be made and heard in the order in which they are set down on the list of motions prepared by the Registrar.

Procedure of motion.

Preparation of Orders.

28. If within one week from the making of an order of adjudication, order annulling adjudication, order on application to approve a composition or scheme, order annulling a composition or scheme, or order on application for discharge, such order has not been completed, it shall be the duty of the Registrar to prepare and complete such order : provided that if in any case the Judge shall be of opinion that the provisions of this Rule ought not to apply, he may so order ; and provided also that where an order of discharge is granted subject to the condition that judgment shall be entered against the Insolvent, nothing in this Rule shall require the Registrar to prepare and complete the order until the Insolvent has given consent, in the prescribed form, to judgment being entered against him.

Preparation orders.

Orders to be prepared and completed by the persons who have obtained them.

29. A person who has the carriage of an order shall obtain from the Registrar an appointment to settle the order, and shall give reasonable notice of the appointment to all persons who may be affected by the order, or to their attorneys.

Notice of appointment to settle order.

Discovery of Debtor's Property.

Applications for
discovery.

30. Every application to the Court under Section 36 of the Act shall be in writing, and shall state shortly the grounds upon which the application is made.

Appropriation of Pay, Salary, Income, etc.

Notice to
Insolvent of
application.

31. When the Official Assignee intends to apply to the Court for an appropriation order under Section 60 of the Act, he shall give to the Insolvent notice of his intention so to do. Such notice shall specify the time and place fixed for hearing the application, and shall state that the Insolvent is at liberty to show cause against such order being made. The notice shall be in the Form No. 2 in the Appendix with such variations as circumstances may require.

Copy of order to
department.

32. Where an order is made under Section 60 of the Act, the Registrar shall give to the Official Assignee a sealed copy of the order, who shall communicate the same to the chief of the department or other person under whom the pay, salary, income, or emolument is enjoyed, or by whom the same is paid or disbursed.

Review of order.

33. Where an order has been made for the payment by an Insolvent, or by his employer or the person by whom the same is paid or disbursed for the time being, of a portion of his pay, income, or salary, the Insolvent may, upon his ceasing to receive a pay, salary, or income, of the amount he received when the order was made, apply to the Court to rescind the order, or to reduce the amount ordered to be paid by him to the Official Assignee.

Warrants, Arrests, and Commitments.

To whom
warrants ad-
dressed.

34. A warrant of seizure, or a search warrant, or any other warrant issued under the provisions of the Act, shall be addressed to such officer of the High Court as the Court may in each case direct.

Custody and
production of
debtor.

35. Where a debtor is arrested under a warrant issued under Section 34 of the Act, he shall be given into the custody of the Superintendent or Keeper of the prison mentioned in the warrant, who shall produce such debtor before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, and any books, papers, moneys, goods and chattels in the possession of the debtor, which may be seized, shall forthwith be lodged with the Official Assignee.

Applications to
commit.

36. An application to the Court to commit any person for contempt of Court shall be supported by affidavit, and be filed in the Court in which the proceedings are.

Notice and
hearing of
application.

37. Subject to the provisions of the Act and these Rules, upon the filing of an application to commit, the Registrar shall fix a time and place for the Court to hear the application, notice whereof

shall be personally served on the person sought to be committed, not less than four clear days before the day fixed for the hearing of the application : Provided that in any case in which the Court may think fit, the Court may allow substituted service of the notice by advertisement or otherwise, or shorten the length of notice to be given.

38. Where an order of committal is made against a debtor, for disobeying any order of the Court, or of the Official Assignee, to do some particular act or thing, the Court may direct that the order of committal shall not be issued provided that the debtor complies with the previous order within a specified time.

*Suspension of
issue of com-
mittal order.*

39. (1) If a debtor or witness examined before the Registrar refuses to answer to the satisfaction of the Registrar any question which he may allow to be put, the Registrar shall report such refusal in a summary way to the Judge, and, upon such report being made, the debtor or witness in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

*Committal of
contumacious
debtor or
witness.*

(2) The report of the Registrar shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the debtor or witness.

(3) The Registrar shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge ; and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

(4) The report of the Registrar may be in the Form No. 3 in the Appendix.

Service and Execution of Process.

40. Every attorney suing out or serving any petition, notice, summons, order, or other document, shall indorse thereon his name or firm and place of business in Calcutta, which shall be called his address for service. All notices, orders, documents, and other written communications which do not require personal service shall be deemed to be sufficiently served on such attorney if left for him at his address for service.

*Address of
Attorney for
service.*

41. Service of notices, orders, or other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week day, except Saturday, shall for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the following day. Service effected after two in the afternoon

*Hours for
service.*

on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

Duties of
Officers, etc.

42. It shall be the duty of such officer as the Court may direct, to serve such orders, summonses, petitions, and notices as the Court may require him to serve ; to execute warrants and other process ; to attend any sittings of the Court (but not sittings in Chambers) ; and to do and perform all such things as may be required of him by the Court.

But this rule shall not be construed to require any order, summons, petition, or notice to be served by an officer of the Court which is not specially by the Act or these Rules required to be so served, unless the Court shall in any particular proceeding by order specially so direct.

Service by post.

43. Where notice of an order or other proceeding in Court may be served by post it shall be sent by registered letter.

Enforcement
of orders.

44. Every order of the Court may be enforced as if it were a decree of the Court to the same effect.

Rules relating to the Business of the Court.

Sittings.

45. The Chief Justice shall regulate the insolvency sittings of the Court.

Registrar's
Office.

46. The office of the Registrar shall be kept open daily, throughout the year, during such days and during such hours as the offices on the Original Side of the Court are kept open.

Costs.

Awarding costs.

47. (1) The Court in awarding costs may direct that the costs of any matter or application shall be taxed and paid as between party and party or as between attorney and client, or that full costs, charges and expenses shall be allowed, or the Court may fix a sum to be paid in lieu of taxed costs.

(2) In the absence of any express direction, costs of an opposed motion shall follow the event, and shall be taxed as between party and party.

(3) Where an action is brought against the Official Assignee as representing the estate of the debtor, or where the Official Assignee is made a party to a cause or matter, on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs.

Orders to be
sealed, signed
and filed.

48. Every order for payment of money and costs, or either of them, shall be sealed, and be signed by the Registrar, and shall be forthwith filed with the proceedings.

Taxation of
costs.

49. The costs directed by any order to be paid shall be taxed on production of an office copy of such order, and the allocatur being duly stamped shall be signed and dated by the Taxing Officer.

Taxing Officer.

50. (1) All bills of costs shall be taxed by the Taxing Officer of the High Court, Original Side, and the High Court Rules relating to taxation of costs shall apply to the taxation of such bills as far as circumstances will permit. Costs, Fees, Taxation.

(2) The table of fees made and established in the High Court, Original Side, and the Table of Fees made and established under the Indian Insolvency Act, 1848, shall so far as circumstances will permit be applicable to and charged for and in respect of proceedings under the Presidency Towns Insolvency Act, 1909.

(See Table of Fees, p. 657, *post.*)

51. The attorney in the matter of an insolvency petition presented by the debtor against himself shall, in his bill of costs, give credit for such sum or security (if any) as he may have received from the debtor, as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition; and the amount of any such deposit shall be noted by the Taxing Officer upon the allocatur issued for such costs. Attorney's costs in case of petition by debtor.

52. When a bill of costs is taxed under any special order of the Court, and it appears by such order that the costs are to be paid otherwise than out of the estate of the Insolvent, the Taxing Officer shall specially note upon the allocatur by whom, or the manner in which such costs are to be paid. Costs paid otherwise than out of estate.

53. Upon the taxation of any bill of costs, charges or expenses, being completed, the Taxing Officer shall forthwith file such bill with the proceedings in the matter, and shall thereupon issue to the person presenting such bill for taxation his allocatur, or certificate of taxation, which shall be in the Form No. 4 in the Appendix. Bills of costs to be filed.

54. The Taxing Officer shall keep a register of all bills taxed by him according to Form No. 5 in the Appendix, and shall, within fourteen days of the 31st day of December in each year, make a return to the Chief Justice, according to Form No. 6 in the Appendix, of all bills taxed by him during the twelve months preceding such 31st day of December. Register of bills taxed.

55. Before taxing the bill or charges of any attorney, manager, accountant, auctioneer, broker, or other person employed by the Official Assignee, the Taxing Officer shall require a certificate in writing, signed by the Official Assignee, to be produced to him, setting forth whether any, and if so what, special terms of remuneration have been agreed to. Certificate of employment.

56. Every person whose bill or charges is or are to be taxed shall in all cases give not less than seven days' notice of the appointment to tax the same to the Official Assignee. Notice of appointment.

Lodgment of bill.

57. The bill or charges shall be lodged with the Official Assignee, three clear days before the application for the appointment to tax the same is made. The Official Assignee shall forthwith, on receiving notice of taxation, lodge such bill or charges with the Taxing Officer.

Copy of bill.

58. Every person whose bill or charges is or are to be taxed, shall, on application of the Official Assignee, furnish a copy of his bill or charges so to be taxed, on payment at the rate of five annas per folio, which payment may be charged to the estate.

Applications for costs.

59. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding—

- (1) Such party or person shall serve notice of his intended application on the Official Assignee :
- (2) The Official Assignee may appear on such application and object thereto :
- (3) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Priority of costs and charges payable out of estate.

60. The assets in every matter remaining, after payment of the actual expenses incurred in realising any of the assets of the debtor, shall, subject to any order of the Court, be liable to the following payments which shall be made in the following order of priority, namely :—

First.—The actual expenses incurred by the Official Assignee in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor :

Next.—Any fees payable to, or costs, charges or expenses incurred or authorized by, the Official Assignee.

Next.—The balance of any deposits lodged with the Official Assignee under these Rules.

Next.—The remuneration of the special manager (if any).

Next.—The remuneration (if any) of the Official Assignee.

Next.—Any allowance made to the insolvent pursuant to an order of the Court.

Next.—Any costs directed by the Court to be paid out of the estate.

Disallowance of costs of unnecessary petition.

61. In any case in which, after an Insolvency petition has been presented by a creditor against the debtor, and before the hearing

of such petition, the debtor files a petition, and an adjudication order is made on the petition of the debtor, unless in the opinion of the Court the estate has benefited thereby, or there are special circumstances which make it just that such costs should be allowed, no costs shall be allowed to the debtor or his attorney out of the estate.

62. In the case of an insolvency petition against a partnership, the costs payable out of the estates incurred up to and inclusive of the adjudication order shall be apportioned between the joint and separate estates in such proportions as the Official Assignee may in his discretion determine. Apportionment of costs in case of partnership

63. (1) Where the joint estate of any co-debtor is insufficient to defray any costs or charges properly incurred, the Official Assignee may pay such costs or charges out of the separate estates of such co-debtors, or one or more of them, in such proportions as in his discretion the Official Assignee may think fit. The Official Assignee may also, as in his discretion he may think fit, pay any costs or charges properly incurred, for any separate estate out of the joint estate or out of any other separate estate, and any part of the costs or charges of the joint estate which affects any separate estate out of that separate estate. Costs out of joint or separate estates

(2) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred, the Official Assignee may pay such costs or charges out of the separate estates of such co-debtors or one or more of them. The Official Assignee may also pay any costs or charges properly incurred for any separate estate, out of the joint estate, and any part of the costs or charges of the joint estate incurred, which affects any separate estate, out of that separate estate. No payment under this Rule shall be made out of a separate estate or joint estate by the Official Assignee without an order of the Court.

Annulment of Adjudication.

64. An application to the Court to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof have been duly served upon the Official Assignee. Unless the Court gives leave to the contrary, notice of any such application shall be served on the Official Assignee not less than seven days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit. Application to annul adjudication

64A. The Registrar shall send notice of an order annulling an adjudication to such local paper (if any) as the Court may in each case direct,

Protection order.

Applications for
protection.

65. Every debtor, intending to apply for a protection order, shall give four days' previous notice to the Official Assignee, and also to each execution-creditor unless the Court shall think fit to dispense with notice to any of such creditors. Every application for protection shall be made by petition verified by affidavit setting forth the grounds on which the application is made.

PART II.

PROCEEDINGS.

Insolvency Petition.

Form of
petition.

66. Every petition shall be fairly written or printed or partly written and partly printed, and no alterations, interlineations, or erasures shall be made without the leave of the Registrar, except so far as may be necessary to adapt a printed form to the circumstances of the particular case. A debtor's petition shall be in Form No. 7, and a creditor's petition shall be in Form No. 8 in the Appendix, with such variations as circumstances may require.

Description
and address
of debtors.

67. (1) Where a petition is presented by a debtor he shall, besides inserting therein his name and description, and his address at the date when the petition is presented, further describe himself as lately residing or carrying on business at the address or several addresses as the case may be, at which he has incurred debts and liabilities which at the date of the petition remain unpaid or unsatisfied. The petition shall also state whether any previous petition has been presented to the Court either by or against the debtor with particulars of any such petition and the manner in which it was disposed of.

(2) Where a petition is presented against a debtor who resides or carries on business at an address other than the address at which the debtor was residing or carrying on business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor, in addition to stating in the petition the description of the debtor, as of his then present address and description, shall, in the petition, describe the debtor as lately residing or carrying on business at the address at which he was residing or carrying on business when the debt or liability was incurred.

Attestation.

68. Every insolvency petition shall be attested. If it be attested in British India, the witness must be an Attorney or Magistrate or the Official Assignee or the Registrar or a Commissioner for oaths and affirmations. If it be attested out of British India,

the witness must be a Judge or Magistrate or a British Consul, or Vice-Consul, or a Notary Public.

69. (1) Upon the presentation of a petition either by the debtor or by a creditor the petitioner shall deposit with the Official Assignee the sum of Rs. 50, and such further sum (if any) as the Court may from time to time direct, to cover the fees and expenses to be incurred by the Official Assignee; and no petition shall be received unless the receipt of the Official Assignee for the deposit payable on the presentation of the petition is produced to the proper officer of the Court. Deposit by petitioner.

(2) The Official Assignee shall account for the money so deposited to the creditor, or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor (except and so far as such deposit may be required by reason of insufficiency of assets for the payment of the fees of and expenses incurred by the Official Assignee) out of the proceeds of the estate in the priority prescribed by these rules.

Creditor's Petition.

70. A petitioning creditor who is resident abroad, or whose estate is vested in a trustee under any law relating to insolvency, or against whom a petition is pending under the Act, or who has made default of payment of any costs ordered by any Court to be paid by him to the debtor, may be ordered to give security for costs to the debtor. Security for costs.

71. Every creditor's petition shall be verified by affidavit. Verification.

72. When the petitioning creditor cannot himself verify all the statements contained in the petition, he shall file in support of the petition the affidavit of some person who can depose to them. Who to verify

73. Where a petition is presented by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge; but it shall be sufficient that each statement in the petition is deposed to by some one within whose knowledge it is. Joint petitioners.

Hearing of Petition.

74. (1) Where a petition is filed by a debtor the Court shall forthwith make an adjudication order thereon. Proceedings on petition.

(2) Where a petition is filed by a creditor the Court shall, upon proof of such statements in the petition as the Court shall think sufficient, forthwith make an adjudication thereon, unless the Court is of opinion that the petition ought to be served upon the debtor, in which case the Court shall adjourn the hearing of the petition to some date and time to be fixed by the Court.

**Service of
petition.**

75. Where the Court directs that a creditor's petition shall be served upon a debtor, such service shall be effected by an officer of the Court, or by the creditor or his attorney, or by some person in their employ, by delivering to the debtor a sealed copy of the filed petition; provided that if personal service cannot be effected, the Court may extend the time for hearing the petition, or if the Court is satisfied by affidavit or other evidence that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and that such petition shall then be deemed to have been duly served on the debtor.

Proof of service.

76. Where the Court orders service of the petition on the debtor, such service shall be proved by affidavit, with a sealed copy of the petition attached, which shall be filed in Court forthwith after the service.

**Service out of
Jurisdiction.**

77. Where the Court orders service of a petition on a debtor petitioned against who is not within the limits of the Original Civil Jurisdiction of the Court, the Court may order service to be made within such time and in such manner and form as it shall think fit.

**Death of debtor
before service
of petition.**

78. If a debtor upon whom the Court has ordered service of an insolvency petition dies before service thereof, the Court may order service to be effected on the legal representatives of the debtor, or on such other persons as the Court may think fit.

**Debtor intend-
ing to show
cause.**

79. Where a debtor, having been served with a petition, intends to show cause against the same, he shall file a notice with the Registrar, specifying the statements in the petition which he intends to deny or dispute, and transmit by post to the petitioning creditor and his attorney, if known, a copy of the notice three days before the day on which the petition is to be heard.

**Non-appear-
ance of debtor
at adjourned
hearing.**

80. If the debtor does not appear at the adjourned hearing, the Court may make an adjudication order on such proof of the statements in the petition as the Court shall think sufficient.

**Appearance of
debtor to show
cause.**

81. On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of insolvency or such of those matters as the debtor shall have given notice that he intends to dispute, shall be proved, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matter shall not be present for cross-examination, and further time shall be desired to show cause, the Court shall, if the application appears to the Court to be reasonable, grant such further time as the Court may think fit.

82. If any creditor neglects to appear on the hearing or adjourned hearing of his petition, no subsequent petition against the same debtor or debtors, or any of them either alone or jointly with any other person, shall be presented by the same creditor in respect of the same act of insolvency without the leave of the Court.

Non-appearance of creditor

83. The personal attendance of the petitioning creditor and of the witnesses to prove the debt, and act of insolvency or other material statements, upon the adjourned hearing of the petition, may, if the Court shall think fit, be dispensed with.

Personal attendance of creditor, when dispensed with

84. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the Registrar to fix a day on which further proceedings on the petition may be had, and the Registrar on production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to the petitioner by post of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute and also to their respective attorneys if known.

Proceedings after trial of disputed question

85. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the Registrar to fix a day on which he may apply to the Court for the dismissal of the petition with costs, and the Registrar, on the production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to both the petitioner and debtor (and to their respective attorneys, if known) by post of the time and place fixed for the hearing of the application.

Application dismissed

86. An application for extension of time for the adjourned hearing of a petition shall be in writing, but need not be supported by affidavit, unless in any case the Court shall otherwise require.

Application for extension of time

87. On an application for extension of time for the adjourned hearing of a petition, no order shall be made for an extension beyond fourteen days from the day fixed for the adjourned hearing of the petition, unless the Court is satisfied that such extension of time will not be prejudicial to the general body of creditors. Any costs occasioned by such application shall not be allowed out of the estate unless so ordered by the Court.

Order for extension of time

Interim Receiver.

88. After the representation of a petition, upon the application of a creditor, or of the debtor himself, and upon proof by affidavit of sufficient ground for the appointment of the Official Assignee as interim Receiver of the property of the debtor, or any part

Appointment of interim Receiver

thereof, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment.

Form and contents of order.

89. Where an order is made appointing the Official Assignee to be interim Receiver of the property of the debtor, such order shall bear the number of the petition in respect of which it is made, and shall state the locality of the property of which the Official Assignee is ordered to take possession.

Deposit.

90. Before any such order is issued, the person who has made the application therefor shall deposit with the Official Assignee the sum of Rs. 100 towards the prescribed fee for the Official Assignee and such further sum as the Court shall direct for the expenses which may be incurred by him.

Further deposit if necessary.

91. If the sum of Rs. 100, and such further sum so to be deposited for the expenses which may be incurred by the Official Assignee, shall prove to be insufficient, the person, on whose application the order has been made, shall from time to time deposit with the Official Assignee such additional sum as the Court may, on the application of the Official Assignee, from time to time direct; and such sum shall be deposited within twenty-four hours after the making of the order therefor. If such additional sum shall not be so deposited, the order appointing the interim Receiver may be discharged by the Court.

Repayment of deposit.

92. If an order appointing an interim Receiver is followed by an adjudication order, the deposits made by the creditor on whose application such interim Receiver was appointed, shall be repaid to him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the fees chargeable and the expenses incurred by the interim Receiver), out of the proceeds of the estate in the order of priority prescribed by these Rules.

Damages if petition dismissed.

93. Where, after an order has been made appointing an interim Receiver, the petition is dismissed, the Court shall, upon application to be made within twenty-one days from the date of the dismissal thereof, adjudicate, with respect to any damages or claim thereto arising out of the appointment, and shall make such order as the Court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

Adjudication.

Form and contents.

94. (1) An adjudication order shall be in one of the Forms Nos. 9 and 10 in the Appendix, with such variations as circumstances may require.

(2) Where any adjudication order is made on a creditor's petition there shall be stated in the adjudication order the nature and date, or dates, of the act, or acts, of insolvency upon which the order has been made. Every order shall contain at the foot there-

of a notice requiring the debtor to attend on the Official Assignee forthwith on the service thereof at the place mentioned therein.

95. Every adjudication order, and order for the appointment of the Official Assignee as interim Receiver of a debtor's property, shall be prepared by the Registrar, and, in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. Where the petitioner is represented by an attorney the adjudication order shall be indorsed with the name and address of such attorney. Preparation

96. A copy of every adjudication order, and order for the appointment of the Official Assignee as interim Receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by the Registrar to the Official Assignee. Transmission of copy to Official Assignee.

97. The Official Assignee shall cause a copy of the adjudication order sealed with the seal of the Court, to be served on the debtor. Service of adjudication order.

98. There may be included in an adjudication order, an order staying any suit or proceeding against the debtor or staying proceedings generally. Stay of proceedings.

99. Where an adjudication order is made, the Registrar shall forthwith send notice thereof to such local paper, as he may select. The notice shall be in the Form No. 11 in the Appendix, with such variations as circumstances may require. Advertisement.

100. All proceedings under the Act down to and including the making of an adjudication order, shall be at the cost of the party prosecuting the same, but when an adjudication order is made, the costs of the petitioning creditor shall be taxed and be payable out of the proceeds of the estate, in the order of priority prescribed by these Rules. Costs of petition, etc.

101. (1) An order annulling an adjudication may be in the Form No. 12 in the Appendix, with such variations as circumstances may require. Order annulling adjudication.

(2) When an adjudication is annulled, the Registrar shall forthwith give notice thereof to the Official Assignee, in order that the annulment may be gazetted.

(3) The order of the Court, annulling an adjudication, shall not relieve the Official Assignee from the liability, imposed on him by the Act and these Rules, to account for all transactions of such Official Assignee in connection with the estate.

102. Where a debtor against whom an adjudication order has been made is not in British India, the Court may order service on the debtor of the order of adjudication, order to attend the public examination of any adjournment thereof, or of any other order made against, or summons issued for the attendance of, the debtor, to be made within such time and in such manner and form as it shall think fit. Service when debtor not in British India.

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Schedule of Affairs.

How made out.

103. Every Insolvent shall be furnished by the Official Assignee with instructions for the preparation of his Schedule of affairs. The Schedule of affairs (which shall be made out in duplicate, and one copy of which shall be verified by affidavit) shall be in the Form No. 13 in the Appendix, with such variations or additions as circumstances may require. The Insolvent shall file with the Registrar the verified schedule and the duplicate schedule with the Official Assignee.

Public Examination of Debtor.

Time for holding public examination

104. When an adjudication order has been made against a debtor, it shall be the duty of the Official Assignee to make an application to the Court to appoint a day and hour for holding the public examination of the debtor, and, upon such application being made, the Court shall, by an order, appoint the day and hour for such public examination, and shall order the debtor to attend the Court upon such day and at such hour.

Notice to creditors of examination.

105. Where any order is made appointing the time and place for holding the public examination of a debtor, the Official Assignee shall serve a copy thereof on the debtor, and shall give to the creditor notice of such order, and of the time and place appointed thereby. The Official Assignee shall also send a notice of such order to such local paper as the Court may from time to time direct, or in default of such direction, as he may think fit.

Adjournment *sine die*.

106. Where the Court is of opinion that a debtor is failing to disclose his affairs, or where the debtor has failed to attend the public examination or any adjournment thereof, or where the debtor has not complied with any order of the Court in relation to his accounts, conduct, dealings, and property, and no good cause is shown by him for such failure, the Court may adjourn the public examination *sine die*, and may make such further or other order as the Court shall think fit.

Proceedings after adjournment *sine die*.

107. Where an examination has been adjourned *sine die*, and the debtor desires to have a day appointed for proceeding with his public examination, the expenses of gazetting, advertising and giving notice to creditors of the day to be appointed for proceeding with such examination shall, unless the Official Assignee consents to the cost being paid out of the estate, be at the cost of the debtor, who shall, before any day is appointed for proceeding with the public examination, deposit with the Official Assignee such sum as the Official Assignee shall think sufficient to defray the expense aforesaid. The balance of the deposit, after defraying the expense aforesaid, shall be returned to the debtor.

Notice of proceedings after adjournment *sine die*.

108. In any case in which a public examination has been adjourned *sine die*, and the Court afterwards makes an order for pro-

ceeding with such public examination, notice to creditors of the time and place appointed for proceeding with such public examination shall be sent by the Official Assignee, and notice shall also be inserted in the *Calcutta Gazette*, and in the local paper in which the notice of the first holding of the public examination was inserted seven days before the day appointed.

109. (1) An application for an order dispensing with the public examination of a debtor, or directing that the debtor be examined in some manner or at some place other than is usual, on the ground that the debtor is a lunatic, or suffers from mental or physical affliction or disability rendering him unfit to attend a public examination, may be made by the Official Assignee, or by any person who has been appointed by any Court having jurisdiction so to do to manage the affairs of or represent the debtor, or by any relative or friend of the debtor who may appear to the Court to be a proper person to make the application.

Public examination of debtor who is a lunatic, etc.

(2) Where the application is made by the Official Assignee, it may be made *ex parte*, and the evidence in support of the application may be given by a report of the Official Assignee to the Court, the contents of which report shall be received as *prima facie* evidence of the matters therein stated.

(3) Where the application is made by some person other than the Official Assignee, it shall be made by motion of which notice shall be given to the Official Assignee, and shall, except in the case of a lunatic so found by inquisition, be supported by an affidavit of a duly qualified medical practitioner as to the physical and mental condition of the debtor.

(4) The order to be made on the application shall be in the Form No. 14 or the Form No. 15 in the Appendix, as the case may be, with such variations as circumstances may require.

Composition or Scheme.

110. Where a debtor intends to submit a proposal for a composition or scheme, the Forms of proposal, notice, and report, Nos. 16, 17, 18, 19 in the Appendix, with such variations as circumstances may require, shall be used by the Official Assignee for the purpose of the meeting of creditors for consideration of the proposal.

Forms where proposal submitted by debtor.

111. Where the creditors have accepted a composition or scheme, and the public examination of the debtor has been concluded, the Official Assignee or the debtor may forthwith apply to the Court to fix a day for the hearing of an application for the approval of such composition or scheme. The Official Assignee shall not by making such application be deemed necessarily to approve of the composition or scheme.

Application by debtor or Official Assignee for approval of Court.

112. Any person other than the Official Assignee who applies to the Court to approve of a composition or scheme shall, not less

Notice to Official Assignee.

than ten days before the day appointed for hearing the application, send notice of the application to the Official Assignee.

Notice to
creditors.

113. Whenever an application is made to the Court to approve of a composition or scheme, the Official Assignee shall, not less than three days before the day appointed for hearing the application, send notice of the application to every creditor who has proved his debt.

Official
Assignee's
report to be

114. In every case of an application to the Court to approve of a composition or scheme, the report of the Official Assignee shall be filed not less than four days before the time fixed for hearing the application,

Hearing.

115. On the hearing of any application to the Court to approve of a composition or scheme, the Court shall, in addition to considering the report of the Official Assignee, hear the Official Assignee thereon.

Costs of ap-
plication by
debtor.

116. No costs incurred by a debtor, of or incidental to an application to approve of a composition or scheme, shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

Evidence and
order.

117. The Court before approving of a composition or scheme shall, in addition to investigating the other matters as required by the Act, require proof that the provisions of sub-sections (1) and (2) of section 28 of the Act have been complied with. An order approving of a composition or scheme shall be in the Form No. 20 in the Appendix, with such variations as circumstances may require.

Provision in
composition or
scheme for
costs and
charges.

118. Where a composition or scheme has been duly accepted by the creditors, such composition or scheme shall not be approved by the Court unless the Court is satisfied, on the report of the Official Assignee, that provision is made for payment of all proper costs, charges, and expenses of and incidental to the proceedings, and all proper fees and percentages payable under the scale of fees and percentages in force for the time being.

Fee on
application.

119. The fee prescribed to be charged for and in respect of an application to the Court to approve of a composition or scheme may be allowed and paid out of the estate of the debtor in any case in which there are sufficient funds in the hands of the Official Assignee available for the purpose.

Correction of
formal slips,
etc.

120. At the time the composition or scheme is approved of, the Court may correct or supply any accidental or formal slip, error, or omission therein, but no alteration in the substance of the composition or scheme shall be made.

Proceedings
if scheme
approved.

121. When a composition or scheme is approved of, the Official Assignee shall, on payment of all proper costs, charges, and expenses of and incidental to the proceedings, and all proper fees

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and percentages payable under the scale of fees and percentages in force for the time being, forthwith put the debtor (or, as the case may be, the trustee under the composition or scheme, or the other person or persons to whom under the composition or scheme the property of the debtor is to be assigned) into possession of the debtor's property. The Court shall also annul the adjudication order.

122. In every case of a composition or scheme in which a trustee is not appointed, or, if appointed, declines to act, or become incapable of acting, or is removed, the Official Assignee shall, unless and until another trustee is appointed by the creditors, be the trustee for the purpose of receiving and distributing the composition, or for the purpose of administering the debtor's property, and carrying out the terms of the composition or scheme, as the case may be.

Cases in which
Official
Assignee is to
be trustee.

123. Where under a composition or scheme of arrangement a trustee is appointed, he shall, after the composition or scheme has been approved by the Court, give security to the satisfaction of the Registrar. If the trustee fail to give such security within the time required, he may be removed by the Registrar.

Security by
trustee under
composition or
scheme.

124. Where a composition or scheme has been approved, and default is made in any payment thereunder either by the debtor or the trustee (if any), no action to enforce such payment shall lie, but the remedy of any person aggrieved shall be by application to the Court.

Default in pay-
ment of com-
position.

125. Where a composition or scheme is annulled, the property of the debtor shall, unless the Court otherwise directs, forthwith vest in the Official Assignee without any special order being made or necessary.

Vesting of
property on
annulment of
composition

126. Where a composition or scheme is annulled, the trustee under the composition or scheme shall account to the Official Assignee for any money or property of the debtor which has come to his hands, and pay or deliver over to the Official Assignee any money or property which has not been duly administered.

Annulment
of composition
or scheme.

127. Where under any composition or scheme provision is made for the payment of any moneys to creditors entitled thereto, and any claim in respect of which a proof has been lodged, is disputed, the Court may, if it shall think fit, direct that the amount which would be payable upon such claim, if established, shall be secured in such manner as the Court shall direct, until the determination of the claim so disputed; and on the determination thereof, the sum so secured shall be paid as the Court may direct.

Dividends
under com-
position or
scheme.

128. Every person claiming to be a creditor under any composition or scheme, who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any, or, if there is no such trustee, with the Official

Proof of
debts in
composition
or scheme.

Assignee who shall admit or reject the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt and his proof has been admitted.

Dividends.

Notice of
intended
dividend.

129. (1) Not more than two months before declaring a dividend, the Official Assignee shall give notice, in the Gazette, of his intention so to do, and at the same time to such of the creditors mentioned in the Insolvent's Schedule of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proofs may be lodged, appeals against the decision of the Official Assignee rejecting a proof, the Official Assignee shall, in such case, make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no appeal has been commenced within the time specified in the Act, the Official Assignee shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by the Act for appealing against the decision of the Official Assignee, he shall proceed to declare a dividend, and shall give notice thereof by advertisement in the Gazette, and shall also send a notice of dividend to each creditor whose proof has been admitted, accompanied by a statement showing the position of the estate.

(4) The notices shall be in the Forms Nos. 21 and 22 in the Appendix, with such variations as circumstances may require.

(5) If it becomes necessary, in the opinion of the Official Assignee and the Committee of Inspection (if any), to postpone the declaration of the dividend beyond the prescribed limit of two months, the Official Assignee shall give a fresh notice of his intention to declare a dividend by advertisement in the Gazette, but it shall not be necessary for the Official Assignee to give fresh notice to such of the creditors mentioned in the Insolvent's Schedule of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(6) The Official Assignee shall pay interest at the rate of 6 per cent. on any dividend ordered to be paid by him under the provision of section 74 of the Act.

Production of
bills,
etc.

130. Subject to the power of the Court in any other case on special grounds to order production to be dispensed with, every bill of exchange, hundi, promissory note, or other negotiable in-

strument of security, upon which proof has been made, shall be exhibited to the Official Assignee before payment of dividend thereon, and the amount of dividend paid shall be indorsed on the instrument.

131. The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by post. Dividend may be sent by post

Discharge.

132. (7) An insolvent intending to apply for his discharge under section 38 of the Act, shall produce to the Registrar a certificate from the Official Assignee specifying the number of his creditors of whom the Official Assignee has notice (whether they have proved or not). The Registrar shall, not less than twenty-eight days before the day appointed for hearing the application give notice of the time and place of the hearing of the application to the Official Assignee, and the Official Assignee shall forthwith cause notice thereof to be gazetted and published once in one English and one vernacular paper. Application.

(2) Notice of the day appointed for the hearing of the debtor's application for discharge shall be sent by the Official Assignee to each creditor not less than one month before the day so appointed. Such notice shall be in the Form No. 23 in the Appendix.

133. In every case of an application by an Insolvent for his discharge, the report of the Official Assignee shall be filed not less than seven days before the time fixed for hearing the application. Report of Official Assignee.

134. Where an Insolvent intends to dispute any statement with regard to his conduct and affairs contained in the Official Assignee's report, he shall, not less than two days before the hearing of the application for discharge, give notice in writing to the Official Assignee, specifying the statements in the report, if any, which he proposes at the hearing to dispute. Any creditor who intends to oppose the discharge of an insolvent on grounds other than those mentioned in the Official Assignee's report, shall give notice of the intended opposition, stating the grounds thereof, to the Official Assignee not less than two days before the hearing of the application. Evidence in answer to report.

135. An insolvent shall not be entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate. Cost of application.

136. (1) Where the Court grants an order of discharge conditionally upon the Insolvent consenting to judgment being entered against him by the Official Assignee for the balance or any part of the balance of the debts provable under the insolvency, which is not satisfied at the date of his discharge, the order of discharge shall not be signed, completed or delivered out until the insolvent has given the required consent in the Form No. 24 in the Conditional orders.

Appendix. The judgment shall be in the Form No. 25 in the Appendix, with such variations as circumstances may require.

(2) If the insolvent does not give the required consent within one month of the making of the conditional order, the Court may on the application of the Official Assignee, revoke the order or make such other order as the Court may think fit.

Order.

137. The order of the Court made on an application for discharge shall be dated of the day on which it is made, and shall take effect from the day on which the order is drawn up and signed ; but such order shall not be delivered out or gazetted until after the expiration of the time allowed for appeal, or, if an appeal be entered, until after the decision of the Appellate Court thereon. The order shall be in one of the Forms Nos. 26 and 27 in the Appendix, as the case may require.

Gazetting order.

138. When the time for appeal has expired, or, as the case may be, when the appeal has been decided by the Court, the Registrar shall forthwith send notice of the order to the Official Assignee, who shall cause the same to be gazetted.

Execution on judgment in case of conditional discharge.

139. (1) An application by the Official Assignee for leave to issue execution on a judgment entered pursuant to a conditional order of discharge shall be in writing, and shall state shortly the grounds on which the application is made. When the application is lodged, the Registrar shall fix a day for the hearing.

(2) The Official Assignee shall give notice of the application to the debtor not less than eight days before the day appointed for the hearing, and shall at the same time furnish him with a copy of the application.

Accounts of after-acquired property.

140. Where an insolvent is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty until such judgment or condition is satisfied, from time to time to give the Official Assignee such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the Court a statement showing the particulars of any property or income he may have acquired subsequent to his discharge.

Verification of statements of after-acquired property.

141. Any statement of after-acquired property or income filed by an insolvent whose discharge has been granted, subject to conditions, shall be verified by affidavit, and the Official Assignee may require the insolvent to attend before the Court to be examined on oath with reference to the statements contained in such affidavit, or as to his earnings, income, after-acquired property or dealings. Where an insolvent neglects to file such affidavit or to attend the Court for examination when required so to do, or properly to answer all such questions as the Court may put or allow to be put to him, the Court may, on the application of the Official Assignee,

rescind the order of discharge. The affidavit shall be in the Form No. 28 in the Appendix, with such variations as circumstances may require.

142. Where after the expiration of two years from the date of any order made upon an insolvent's application for a discharge, the insolvent applies to the Court to modify the terms of the order on the ground that there is no reasonable probability of his being in a position to comply with the terms of such order, he shall give fourteen days' notice of the day fixed for hearing the application to the Official Assignee and to all his creditors.

Application for modification of order.

142 A. Where an insolvent does not apply to the Court for his discharge under Section 38 of the Act for a period of eighteen months from the date of the order of adjudication, the Court on the application of the Official Assignee or of a creditor may annul the adjudication or make such order as it may think fit.

Proceedings of discharge not applied for within 18 months.

142 B. The Registrar shall fix a day for the hearing of any application to be made to the Court by the Official Assignee or by a creditor under Rule 142 A, and notice of the intended application shall be given to the insolvent and also published in the *Calcutta Gazette* 14 days before the day so fixed.

Notice of application under section 41.

142 C. A similar notice shall be given and published when the Court desires to proceed of its own motion under Section 41 of the Act.

Procedure when the Court acts suo motu.

Proxies and Voting Letters.

143. (1) A general proxy shall be in the Form No. 29, a special proxy shall be in the Form No. 30 in the Appendix.

Form and filing of proxies.

(2) A proxy shall be lodged with the Official Assignee not later than one clear day before the time appointed for the meeting or adjourned meeting, at which it is to be used.

(3) As soon as a proxy or voting letter has been used it shall be filed with the proceedings in the matter.

144. A proxy given by a creditor shall be deemed to be sufficiently executed if it is signed by any person in the employ of the creditor having a general authority to sign for such creditor, or by the authorised agent for such creditor if resident abroad; such authority shall be in writing, and shall be produced to the Official Assignee, if required.

Signature of proxies.

145. The proxy of a creditor blind or incapable of writing in the English language may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; and provided that all insertions in the proxy are in the hand-writing of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Filing in when creditor blind, etc.

Minors not to be proxies.

146. No person shall be appointed a general or special proxy who is a minor.

Proceedings by Company or Co-partnership.

Public Officer or agent of company, etc.

147. An insolvency petition, against any debtor to any company or co-partnership duly authorised to sue and be sued in the name of a public officer or agent of such company or co-partnership, may be presented by or sued out by such public officer or agent as the nominal petitioner for and on behalf of such company or co-partnership, on such public officer or agent filing an affidavit stating that he is such public officer or agent, and that he is authorised to present or sue out such petition.

Proceedings by or against Firm.

Attestation of firm signature.

148. Where any notice, declaration, petition or other document requiring attestation is signed by a firm of creditors of debtors in the firm name, the partner signing for the firm shall add also his own signature, *e.g.*, "Brown & Co., by James Green, a partner in the said firm."

Service on firm.

149. Any notice or petition for which personal service is necessary, shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm in Calcutta, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

Debtor's petition by firm.

150. Where a firm of debtors file an insolvency petition, the same shall contain the names in full of the individual partners, and if such petition is signed in the firm name, the petition shall be accompanied by an affidavit made by the partner who signs the petition, showing that all the partners concur in the filing of the same.

Adjudication order against firm.

151. An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in that firm.

Schedule of affairs.

152. In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs.

Joint and Separate Estates.

Acceptance of composition, etc., by joint and separate creditors.

153. The joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

154. Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors ; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved the adjudication orders shall be annulled only so far as it relates to the estate, the creditors of which have confirmed the composition or scheme. Voting on composition.

155. If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last-mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And when any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein. Separate firms.

Lunatics.

156. (1) Where it appears to the Court that any debtor or creditor or other person who may be affected by any proceeding under the Act or these Rules, is a lunatic not so found by inquisition (hereinafter called the lunatic), the Court may appoint such person as it may think fit to appear for, represent, or act for, and in the name of the lunatic, either generally, or in and for the purpose of any particular application or proceeding, or the exercise of any particular rights or powers which under the Acts and these Rules the lunatic might have exercised if he had been of sound mind. The appointment may be made by the Court either on an application made as hereinafter mentioned, or, if the Court thinks fit to do so, without any previous application. Lunatics.

(2) An application to the Court to make an appointment under this Rule may be made by any person who has been appointed by any Court having jurisdiction so to do, to manage the affairs or property of, or to represent the lunatic, or by any relative or friend of the lunatic who may appear to the Court to be a proper person to make the application, or by the Official Assignee.

(3) The application may be made *ex parte* and without notice, but in any case in which the Court shall think it desirable, the Court may require such notice of the application as it shall think necessary to be given to the Official Assignee, or to the petitioning creditor, or to the person alleged to be a lunatic, or to any other person, and for that purpose may adjourn the hearing of the application.

(4) Where the application is made by some person other than the Official Assignee, it shall be supported by an affidavit of a duly qualified medical practitioner as to the physical and mental condition of the lunatic. Where the application is made by the Official Assignee, it must be supported by a report of the Official Assignee, the contents of which shall be received as *prima facie* evidence of the facts therein stated.

(5) When a person has been appointed under this Rule, any notice under the Act and these Rules served on, or given to, such person, shall have the same effect as if the notice had been served on or given to the lunatic.

PART III.

SPECIAL PROCEDURES.

Small Insolvencies.

Application
for order.

157. An application by the Official Assignee that the estate of a debtor may be ordered to be administered in a summary manner shall be in the Form No. 31 in the Appendix, with such variations as circumstances may require.

Summary
administra-
tion.

158. Where an estate is ordered to be administered in a summary manner, under Section 106 of the Act, the provisions of the Act and these Rules shall, subject to any special direction of the Court, be modified as follows, namely :—

(1) There shall be no advertisement of any proceedings in a local paper unless the Registrar otherwise directs.

(2) The title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words “ Summary case.”

(3) On an application by an insolvent for his discharge the certificate of the Official Assignee shall not include, nor shall notices be sent to, creditors whose debts do not exceed Rs. 30.

(4) Notices of meetings, or of sittings of the Court, shall only be sent to creditors whose debts or claims exceed the sum of Rs. 30.

(5) The estate shall be realised with all reasonable despatch and, where practicable, distributed in a single dividend when realised.

(6) The costs or charges of any person employed by the Official Assignee other than of an attorney may be paid and allowed without taxation where such costs or charges are within the prescribed scale.

Administration of Estate of Person during Insolvent.

159. A creditor's petition under Section 108 of the Act shall be in the Form No. 32 in the Appendix, with such variations as circumstances may require, and shall be verified by affidavit. Form of petition.

160. Where an administration order under Section 108 of the Act is made, such order shall be gazetted and advertised in the same manner in all respects as an order of adjudication is gazetted and advertised. Gazetting.

161. The petition shall, unless the Court otherwise directs, be served on each executor who has proved the Will, or, as the case may be, on each person who has taken out Letters of Administration, or the legal representatives of the deceased. The Court may also, if the Court thinks fit, order the petition to be served on any other person. Service.

162. An administration order under Section 108 of the Act shall be in the Form No. 33 in the Appendix with such variations as circumstances may require. Administration Order.

163. Where an administration order under Section 108 of the Act has been made, it shall be the duty of the executor or legal representatives or representative of the deceased debtor to lodge with the Official Assignee forthwith (in duplicate) an account of the dealings with, and administration of (if any), the deceased's estate by such executor or legal representatives or representative, and such executor or legal representatives or representative shall also furnish forthwith in duplicate a list of the creditors and a statement of the assets and liabilities, and such other particulars of the affairs of the deceased as may be required by the Official Assignee. Every account, list, and statement to be made under this Rule shall be made and verified as nearly as may be in accordance with the practice for the time being in force on the Original Side of the Court. Duties of executor, etc.

The expense of preparing, making, verifying, and lodging any account, list and statement under this Rule shall, after being taxed, be allowed out of the estate upon production of the necessary allocatur.

164. In any case in which an administration order under Section 108 of the Act has been made, and it appears to the Court, on the report of the Official Assignee, that no executor or administrator exists, the account, list, and statement mentioned in the last preceding rule shall be made, verified, and lodged by such person as in the opinion of the Court, upon such report, may have taken upon himself the administration of, or may otherwise have intermeddled with, the property of the deceased, or any part thereof. Executor, de son tort.

Rules as to
administra-
tion of estate
of deceased
insolvent.

165. In proceedings under an order for the administration of the estate of a person dying insolvent, where a meeting of creditors is summoned :—

- (1) The provisions of Schedule I of the Act relating to the mode of summoning a meeting of creditors, and to the persons entitled to vote at a meeting,
- (2) The provision of these Rules, which refer to creditors, meetings of creditors, trustees, and Committees of Inspection, and
- (3) Where the property is not likely to exceed in value, the sum of Rs. 3,000, the provisions of Section 106 of the Act,

shall, so far as applicable, apply as if the proceedings were under an order of adjudication.

PART IV.

OFFICERS, AUDIT, ETC.

Books to be kept and Returns to be made by the Registrar.

Books to be
kept by the
Registrar.

166. The Registrar shall keep books according to the Forms Nos. 34, 35 and 36 in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after the proceedings shall be had.

Extracts and
returns.

167. The Registrar shall make and transmit to the Chief Justice such extracts from his books, and shall furnish such information and returns as the Chief Justice may from time to time require.

Accounts and Audit..

Official Assign-
ee to open an
account in the
Bank of Bengal.

168. The Official Assignee shall open an account with the Bank of Bengal entitled, "The Account of the Official Assignee of Calcutta," and all monies received by him in the realization of insolvent's estate shall after deducting such sum as may be required for immediate payment of costs, charges, etc., within seven days after the receipt thereof be paid into the credit of the said account.

New Invest-
ments.

169. The Official Assignee shall invest all sums to the credit of insolvent's estate as may not be required for the payment of costs, expenses or dividends in the purchase of $3\frac{1}{2}$ per cent. Promissory Notes of the Government of India and deposit such notes with the said Bank to the credit of such estate respectively at the expiration of each half year ending on the 31st January and 31st July, respectively.

Official Assign-
ee to keep
accurate ac-
counts.

170. The Official Assignee shall keep accurate accounts of the property, debts and credits of every insolvent and of all monies received and payments made, which accounts any creditor shall be at liberty to inspect at all reasonable times.

171. The Official Assignee shall prepare a statement of accounts of each estate not then wound up and fully distributed, that is to say, of the whole receipt, of the whole disbursements (distinguishing dividends from other payments), of the balance remaining and of the mode in and securities on which the balance is actually invested, and at the foot thereof shall specify the amount of commission received by him during the half year.

Official Assignee to prepare half yearly an account of each estate.

172. The Chief Justice shall from time to time appoint an auditor or auditors to examine half yearly up to the 31st day of January and the 31st day of July in every year the statement which the Official Assignee is required to prepare under Rule 171.

Chief Justice to appoint auditor.

173. The auditor or auditors so appointed shall examine the said statement and the accounts, of the Official Assignee and shall report thereon to the Chief Justice; and if during such audit any question or matter of difference shall arise between the auditor or auditors and the Official Assignee in respect of any payment, receipt, voucher or otherwise, such question or matter of difference shall be referred to the Chief Justice or to such Judge as he may appoint to decide the same.

Auditor to examine accounts and report to the Chief Justice.

174. On completion of each audit the statement above referred to shall be signed by the auditor or auditors and by the Official Assignee, and shall be published forthwith in the local Official Gazette.

Half yearly statement to be published in Gazette.

175. The Official Assignee shall open an account called "The Unclaimed Dividend Account" and shall from time to time transfer to the said account all dividends unclaimed within one year from the date of declaration of such dividend together with all sums standing to the credit of insolvents' estates in which no further recovery is anticipated and in which no dividend can be declared and all such other unclaimed balances whatsoever as may be in his hands by virtue of proceedings under the Indian Insolvency Act, 1848, or any other previous Insolvency Act and invest all monies standing to the credit of the account in $3\frac{1}{2}$ per cent. of Promissory Notes of the Government of India.

Official Assignee to open unclaimed dividend account.

176. The Official Assignee shall transfer the interest arising from such investment to an account called "The Unclaimed Dividend Revenue Account" and from the monies at credit with such account shall pay such fee not exceeding Rs. 1,000 for each audit as the Chief Justice shall consider reasonable, together with such sums for stationery, wages and other office expenses as the Chief Justice may direct.

Payment of audit fee and other expenses.

Security of Official Assignee.

177. The Official Assignee previous to his admission shall enter into a Bond with sufficient sureties to the Registrar in the penalty of Rs. 1,00,000, conditioned for the clear execution of his office.

Remuneration of Official Assignee.

178. The Official Assignee shall be entitled to retain as remuneration for the duties to be performed by him—

- (a) such fees and percentages as may be chargeable by him under the Act and these Rules;
- (b) a commission of 5 per cent. on the principal amount or value of the assets collected by him on each estate, and a commission of 1 per cent. on the value of assets taken charge of or collected by him as *interim* receiver.

*Explanation :—*For the purposes of this rule, the amount to be paid in pursuance of a composition or scheme of arrangement, and also any amount realised under the *Second Schedule to the Act*, shall be deemed to be assets collected by the Official Assignee.⁽¹⁾

Committee of Inspection.

179. In any case in which the Court authorises the creditors to appoint a Committee of Inspection, pursuant to Section 88 of the Act, the creditors qualified to vote may at a meeting duly convened for the purpose by resolutions appoint from among the creditors or the holders of general proxies or general powers-of-attorney from such creditors a Committee of Inspection for the purpose of superintending the administration of the Insolvent's property by the Official Assignee. The Committee of Inspection shall consist of not more than five, nor less than three persons.

180. The Committee of Inspection shall meet at such times as they shall from time to time appoint, and failing such appointment at least once a month; and the Official Assignee or any member of the Committee may also call a meeting of the Committee as and when he thinks necessary.

181. The Committee of Inspection may act by a majority of their members present at a meeting, but shall not act unless a majority of the Committee are present at the meeting.

182. Any member of the Committee may resign his office by notice in writing signed by him, and delivered to the Official Assignee.

183. If a member of the Committee becomes insolvent or compounds or arranges with his creditors, or is absent from five consecutive meetings of the Committee his office shall thereupon become vacant.

184. Any member of the Committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

185. On a vacancy occurring in the office of a member of the Committee, the Official Assignee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting

⁽¹⁾ The Explanation to r. 178 was amended on 8th August 1910. Amendment sanctioned by Government. See Notification No. 1190, dated 26th August 1910.

may by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

186. The continuing members of the Committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the Committee of Inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

187. When a Committee of Inspection has been appointed under Section 88 of the Act, the Official Assignee shall in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the Committee of Inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the Committee of Inspection.

188. When a Committee of Inspection has been appointed under Section 88 of the Act, the Official Assignee shall obtain the consent of the Committee before applying to the Court for leave to do any of the things for which such leave is required by Section 68 of the Act.

189. No defect or irregularity in the appointment or selection of a member of a Committee of Inspection shall vitiate any act done by him in good faith.

190. The Official Assignee shall submit the record book and cash book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

191. The Committee of Inspection shall, not less than once every three months, audit the cash book and certify therein under their hands and day on which the said book was audited. The certificate shall be in the Form No. 37 in the Appendix, with such variations as circumstances may require.

192. Neither the Official Assignee nor any member of the Committee of Inspection of an estate shall, while acting as Official Assignee or member of such Committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent or servant, become purchaser of any part of the estate. Any such purchase made contrary to the provisions of this Rule, may be set aside by the Court either on its own motion or on the application of any person interested.

193. No member of a Committee of Inspection of an estate shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent or servant, be entitled to derive any profit from any transaction aris-

ing out of the insolvency or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the Official Assignee for or on account of the estate. If it appears to the Court that any profit or payment has been made contrary to the provisions of this Rule, the Court may disallow such payment or recover such profit, as the case may be, on the audit of the Official Assignee's account.

194. When the sanction of the Court under the last preceding Rule to a payment to a member of a Committee of Inspection for service rendered by him in connection with the administration of the estate is obtained, the order of the Court shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall under any circumstances be allowed to a member of a Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such Committee.

195. Where the Official Assignee carries on the business of the debtor, he shall keep a distinct account of the trading and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.

196. The trading account shall from time to time and not less than once in every month be verified by affidavit, and the Official Assignee shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

Disclaimer of Lease.

Disclaimer
of lease.

197. (1) A lease may be disclaimed without the leave of the Court in any of the following cases, *viz.* :—

(i) Where the insolvent has not sub-let the demised premises or any part thereof or created a mortgage or charge upon the lease ; and

(a) The rent reserved and real value of the property leased, as ascertained by the property tax assessment, are less than Rs. 300 per annum ; or

(b) The estate is administered under the provisions of Section 106 of the Act ; or

(c) The Official Assignee serves the lessor with notice of his intention to disclaim, and the lesser does not within seven days after the receipt of such notice give notice to the Official Assignee requiring the matter to be brought before the Court.

(ii) Where the insolvent has sub-let the demised premises or created a mortgage or charge upon the lease, and the Official

Assignee serves the lessor and the sub-lessee or the mortgagees with notice of his intention to disclaim, and neither the lessor nor the sub-lessee or the mortgagees or any of them within 14 days after the receipt of such notice, require or requires the matter to be brought before the Court.

(2) The notices shall be in the Form Nos. 38, 39, 40 and 41, in the Appendix, with such variations as circumstances may require.

(3) Except as provided by this Rule, the disclaimer of a lease without the leave of the Court shall be void.

(4) Where the Official Assignee disclaims a leasehold interest, he shall forthwith file the disclaimer with the proceedings in the Court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the Official Assignee, the disclaimer shall be inoperative.

(5) Where, in pursuance of notice by the Official Assignee of his intention to disclaim a leasehold interest, the lessor, sub-lessee, or mortgagee requires the Official Assignee to apply to the Court for leave to disclaim, the costs of the lessor, sub-lessee, or mortgagee shall not be allowed out of the estate of the Insolvent, except in cases in which the Court is satisfied that such application was necessary in order to do justice between the parties.

(6) A disclaimer made without leave of the Court under this Rule shall not be void or otherwise affected on the ground only that the notice required by this Rule has not been given to some person who claims to be interested in the demised property.

(7) Where any person claims to be interested in any part of the property of the insolvent burdened with onerous covenants, he shall, at the request of the Official Assignee, furnish a statement of the interest so claimed by him.

PART V.

MISCELLANEOUS.

Miscellaneous Matters.

198. The Court may, from time to time, issue general orders or regulations for the purpose of regulating any matters under the Act or these Rules, which are of an administrative character. Administration of orders, etc.

199. (1) Any person who knowingly falsifies or fraudulently alters any document in or incidental to any proceeding under the Act or these Rules, shall be deemed to be guilty of contempt of Court, and shall be liable to be punished accordingly. Falsification of documents.

Non-compliance with Rules.

Abridgment or enlargement of time.

Repeal of Rules under the Act of 1848.

Saving for existing laws, etc.

203. When no other provision is made by the Act or these Rules, the present law, procedure, and practice in insolvency matters shall, in so far as applicable, remain in force.

APPENDIX OF FORMS.

Form No. 1.

(General Title.)

**IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL,
IN INSOLVENCY.**

No. OF 19 .

Re (JAMES BROWN).

Ex parte (here insert "the Debtor" or
"J. S. a creditor," or "the Official
Assignee").

No. 2 (SEE RULE 31).

NOTICE TO INSOLVENT UNDER SECTION 60.

(Title.)

To A. B.

Take notice that I intend to apply to this Court on the
day of 19 , at o'clock in the noon for
an order under Section 60 of the Presidency Towns Insolvency
Act, 1909, for the payment of a part of your salary [or income]
to me as Official Assignee for the benefit of the Creditors under
your insolvency ; and that you are at liberty on the date men-
tioned to show cause against such order being made.

Dated this day of 19 .

Official Assignee.

No. 3 (SEE RULE 39).

REPORT OF REGISTRAR WHERE INSOLVENT OR WITNESS REFUSES
TO ANSWER TO HIS SATISFACTION.

(Title.)

At the (public) examination of (a) held before me this
day of 19 , the following question was
allowed by me to be put to the said ().

Q. (b)

The (c) refused to answer the said question.

(or) The (c) answered the said question as follows :—

A. (d)

I thereupon named the day of
19 at as the time and place
for such (refusal to) answer to be reported to Mr. Justice

Dated this day of 19 .

Registrar.

(a) The above-named insolvent, e.g., A. B., a witness in the above matter.

(b) Here state question.

(c) Insolvent or Witness.

(d) Here insert answers (if any).

No. 4 (SEE RULE 53).

ALLOCATUR.

(Title.)

I hereby certify that I have taxed the bill of costs [or charges]
[or expenses] of Mr. C. D. [here state capacity in which employed
or engaged] [where necessary add “pursuant to an order of the
Court dated the day of 19 ”], and have
allowed the same [in case of Solicitor’s costs state whether on
higher or lower scale] at the sum of Rupees
 annas and pies [where
necessary add “which sum is to be paid to the said C. D. by
as directed by the said order.”]

Dated this day of 19 .

Rs.

Taxing Officer.

No. 6 (SEE RULE 54).

RETURN BY TAXING OFFICER.

THE PRESIDENCY TOWNS INSOLVENCY ACT, 1909.

IN THE HIGH COURT, ETC.

Return of Bills taxed during the year ending 31st December 19

	THE PRESIDENCY TOWNS INSOLVENCY ACT, 1909.			
	Number of Bills taxed.	Gross Amount of Bills.	Amount struck off on Taxa- tion.	Net Amount allowed.
Solicitors' Bills . . .				
Auctioneers' Bills . . .				
Official Assignees' or Mana- gers' Bills.				
Accountants' Bills . . .				
Other Bills				
TOTAL				

Taxing Officer.

No. 7 (SEE RULE 66).

INSOLVENT'S PETITION.

(Title.)

I (a) _____ lately residing at _____ (and carrying on
 business at (b) _____) having for the greater part of the
 past six months resided at _____ (and carried on busi-
 ness at _____) within the limits of the Ordinary Original

NOTE.—Where the insolvent resides at a place other than his place of business both addresses should be inserted.

(a) Insert name, address and description of insolvent.

(b) Insert the other address or addresses at which unsatisfied debts or liabilities may have been incurred.

Filed the day of 19

That I hold security for the payment of (or part of) the said sum (but that I will give up such security for the benefit of the creditors of A. B. in the event of his being adjudged insolvent (or and I estimate the value of such security at the sum of Rs.).

On the petition of the debtor himself, filed the day of
19 and numbered of 19 an adjudication

No. 11 (SEE RULE 99).

NOTICE OF ADJUDICATION ORDER (FOR ADVERTISING IN LOCAL PAPER).

(Title.)

On the day of an order was made by the High Court of Judicature at Fort William in Bengal in its Insolvency Jurisdiction adjudging the abovenamed as an Insolvent.

NOTE.—All debts due to the estate should be paid to me.

Dated day of 19 .

Official Assignee.

Address.

No. 12 (SEE RULE 101).

CONTENTS OF ORDER ANNULLING ADJUDICATION UNDER SECTION 21.

(Title.)

On the application of R. S., of , and on reading and hearing , it is ordered that the order of adjudication dated against A. B. of be and the same is hereby annulled.

Dated this day of 19 .

Registrar.

INSOLVENCY RULES.

625

No. 13 (am) RULE 103).

SCHEDULE OF AFFAIRS.

(Twice).

To the Insolvent.—You are required to fill up, carefully and accurately, this sheet, and the several sheets A, B, C, D, E, F, G, H, I, J and K, showing the state of your affairs on the day on which the adjudication order was made against you, viz., the day of 19

Such sheets, when filled up, will constitute your Schedule of Affairs, and must be verified by oath or solemn affirmation.

Gross Liabilities.			Liabilities (as stated and estimated by Insolvent).			Expected to Rank.			Assets (as stated and estimated by Insolvent).			Estimated to produce.			
Rs.	A.	P.		Rs.	A.	P.	Rs.	A.	P.		Rs.	A.	P.		
			Unsecured Creditors, as per list (A.)							Property as per list (H.) viz. :—					
			Creditors fully secured as per list (B.)	Rs.	A.	P.				(a) Cash at bankers					
			Estimated value of securities							(b) Cash in hand					
			Surplus							(c) Cash deposited with Solicitor for costs of petition					
			Less amount thereof carried to sheet (C.)							(d) Stock in Trade cost (Rs.)					
			Balance thereof to contra Creditors partly secured as per list (C.)							(e) Machinery					
			Less estimated value of securities							(f) Trade fixtures, fittings, utensils, etc.					
			Liabilities on bills discounted other than Insolvent's own acceptances for value, as per list (D.), viz. :—							(g) Agricultural stock					
			On accommodation bills as drawer, acceptor or indorser	Rs.						(h) Growing crops and tenant right					
			On other bills, as drawer or indorser	Rs.						(i) Furniture					
			Of which it is expected will rank against the estate for dividend							(j) Life policies					
			Contingent or other liabilities as per list (E.)	Rs.						(k) Other property, viz. :—					
			Of which it is expected will rank against the estate for dividend							Total as per list (H.)					
			Creditors for rent, etc., as per list (F.)	Rs.	A.	P.				Book debts, as per list (I.), viz. :—					
			Creditors for rates, taxes, wages, etc., payable in full, as per list (G.)							Good					
			Debts due to the Crown or to any local authority							Doubtful	Rs.	A.	P.		
			Deducted Contra							Bad					
				Rs.						Bills of exchange or other similar securities, on hand, as per list (J.)					
										Estimated to produce					
										Surplus from securities in the hands of creditors fully secured (per contra)					
											Rs.				
										Deduct creditors for rent and for preferential rates, taxes, wages, Crown debts, etc. (per contra)					
											Rs.				
										Deficiency explained in statement (K.)					
											Rs.				

I, _____, residing at _____, make oath (or solemnly affirm) and say that the above statement and the several lists hereto annexed marked A, B, C, D, E, F, G, H, I, J, and K, are to the best of my knowledge and belief, a full, true, and complete statement of my affairs on the date of the above-mentioned adjudication order made against me.

Sworn (or solemnly affirmed) at this _____ day of _____ 19____ before me. } Signature.

A.*Unsecured Creditors.*

The names to be arranged in alphabetical order and numbered con-

No.	Names.	Address and Occupation.	Amount of Debt.	DATE WHEN CONTRACTED.		Consideration.	Admitted or disputed.
				Month.	Year.		

Signature

Dated 19

NOTE.—1. When there is a contra account against the creditor, less than the amount of his claim against the estate, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt," thus :—

Rs. A. P.

Total amount of claim	:	:	:	:	:	:	:	:	:
Less contra account	:	:	:	:	:	:	:	:	:

No such set-off should be included in Sheet "1."

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

B.*Creditors fully secured.*

Number.	Name of Creditor.	Address and Occupation.	Amount of Debt.	DATE WHEN CONTRACTED.		Consideration.	Particulars of security.	Date when given.	Estimated value of security.	Estimated surplus from security.
				Month.	Year.					

Signature

Dated

19

C.

Creditors partly secured.

No.	Name of creditor.	Address and occupation.	Amount of debt.	DATE WHEN CONTRACTED.		Consideration.	Particulars of security.	Month and year when given.	Estimated value of security.	Balance of debt unsecured.
				Month.	Year.					

Signature

Dated

19 .

D.

Liabilities of Insolvent on Bills discounted other than his own acceptances for value.

No.	Acceptor's name, address, and occupation.	Whether liable as drawer or indorser.	Date when due.	AMOUNT.		Holder's name, address, and occupation (if known).	Amount expected to rank against Estate for dividend.
				Accommodation Bills.	Other Bills.		

Signature

Dated

19 .

2 2

E.**CONTINGENT OR OTHER LIABILITIES.**

Full particulars of all liabilities not otherwise scheduled to be given here.

No.	Name of Creditor or claimant.	Address and occupation.	Amount of liability or claim.	DATE WHEN LIABILITY INCURRED.		Nature of liability.
				Month.	Year.	

Signature

Dated

19

F.*Creditors for Rent, etc.*

No.	Name of Creditor.	Address and occupation.	Nature of claim.	Period during which claim accrued due.	Date when due.	Amount of claim.	Amount recoverable as in priority under section 49.	Difference ranking for dividend (to be carried to List A).

Signature

Dated

19

G.

Preferential Creditors for Rates, Taxes, and Wages under section 49.

No.	Name of Creditor.	Address and occupation.	Nature of claim.	Period during which claim accrued due.	Date when due.	Amount of claim.	Amount payable in full.		Difference ranking for dividend (to be carried to List A).	

Signature

Dated

19 .

H.

PROPERTY.

Full particulars of every description of property in possession and in reversion, not included in any other lists, are to be set forth in this list.

Full statement and Nature of Property.							Estimated to Produce.		
							Rs.	A.	P.
(a)	Cash at Bankers	.	.	.	.	.	.	.	.
(b)	Cash in hand	.	.	.	.	.	.	.	.
(c)	Cash deposited with Solicitor for costs of petition	.	.	.	.	.	.	.	.
(d)	Stock in trade at (Cost Rs. )	.	.	.	.	.	.	.	.
(e)	Machinery at	.	.	.	.	.	.	.	.
(f)	Trade fixtures, fittings, utensils, etc., at	.	.	.	.	.	.	.	.
(g)	Agricultural stock	.	.	.	.	.	.	.	.
(h)	Growing crops and Tenant Right at	.	.	.	.	.	.	.	.
(i)	Household furniture and Effects at	.	.	.	.	.	.	.	.
(j)	Life Policies	.	.	.	.	.	.	.	.
(k)	Other property (state Particulars), viz.	.	.	.	.	.	.	.	.

Signature

Dated

19 .

I.

Debts due to the Estate.

No.	Name of Debtor.	Residence and occupation.	AMOUNT OF DEBTS.			Folio of Ledger or other Book where particulars to be found.	WHEN CONTRACTED.		Estimated to produce.	Particulars of any securities held for debt.
			Good.	Doubtful.	Bad.		Month.	Year.		

Signature

Dated 19 .

NOTE.—If any debtor to the estate is also a creditor, but for a less amount than his indebtedness, the gross amount due to the estate and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of debt" thus :—

Due to estate
Less Contra Account

Rs. a. p.

No such claim should be included in "Sheet A."

J.

Bills of Exchange, Promissory Notes, etc., available as Assets.

No.	Name of Acceptor of Bill or Note.	Address, etc.	Amount of Bill or Note.			Date when due.	Estimated to produce.	Particulars of any property held as security for payment of Bill or Note.

Signature

Dated 19

Deficiency Account.

B		a.		p.		R		a.		p.		R		a.		p.			
Excess of assets over liabilities on the (a) day of 19 (if any)								Excess of liabilities over assets on the (a) day of 19 (if any)											
Net profit (if any) arising from carrying on business from the (a) day of 19, to date of adjudication order, after deducting from profits the usual trade expenses								Net loss (if any) arising from carrying on business from the (a) day of 19, to date of adjudication order, after deducting from profits the usual trade expenses											
Income or profit from other sources (if any) since the (a) day of 19								Bad debts (if any) as per schedule "I" (b) day of 19, other than usual trade expenses, viz., household expenses of self and (c)											
Deficiency as per statement of affairs								(d) Other losses and expenses (if any)											
								Surplus as per statement of affairs (if any)											
Total amount to be accounted for																Total amount accounted for			
(c) R																(c) R			

Dated 19

NOTES.—(a) This debt should be 12 months before date of adjudication order or such other time as Official Assignee may have fixed.
(b) This schedule must show when debts were contracted.
(c) Add "Wife and Children" (if any), stating number.
(d) Here add particulars of other losses of expenses (if any), including depreciation in the value of stock and effects or other property so estimated for realization and liability (if any) for which no consideration received.
(e) These figures should agree.

No. 14 (SEE RULE 109).

CONTENTS OF ORDER DISPENSING WITH PUBLIC EXAMINATION OF INSOLVENT.

(Title.)

Upon the application of the Official Assignee (or, of (a)
of) in the above matter, and upon reading
and upon hearing , and it appear-
ing to the Court that the insolvent is (b)
it is ordered that the public examination of the insolvent be dis-
pensed with.

Dated this day of 19 .

Registrar.

(a) Insert name and address of applicant, and the capacity in which he makes the application.
(b) State what the disability is.

INSOLVENCY RULES.

No. 15 (SEE RULE 109).

**CONTENTS OF ORDER AS TO EXAMINATION OF INSOLVENT WHO IS
SUFFERING FROM MENTAL OR PHYSICAL AFFLICTION OR DIS-
ABILITY.**

(Title.)

Upon the application of the Official Assignee [or, of (a)
] in the above matter, and upon hearing
, and it appearing to the Court that the insolvent is suffer-
ing from physical disability which makes him unfit to attend a
public examination in Court (or, as the case may be), it is ordered
that instead of a public examination of the insolvent (b), the in-
solvent be examined on oath or solemn affirmation at (c)
before the Registrar on the
day of 19 at o'clock or such other
time as having regard to the condition of the insolvent may be
convenient, and that the Official Assignee and (d) be
at liberty to attend such examination and take part therein.

Dated this day of 19

Registrar.

(a) Insert name and address of applicant and the capacity in which he makes the applica-
tion.

(b) This part of the order to be adopted to the circumstances of the case.

(c) Insert name of any other person authorized by the Court to attend.

(d) Insert : of any other pe authorized by the Court to attend.

No. 16 (SEE RULE 110).

PROPOSAL FOR A COMPOSITION.

(Title.)

I, the above-named insolvent, hereby submit the following proposal for a composition in satisfaction of my debts :—

1. That payment in priority to all other of my debts of all debts directed to be so paid in the distribution of the property of an insolvent shall be provided for as follows :—

[Set out terms of proposal so far as relate to preferential claims.]

2. That provision for payment of all the proper costs, charges and expenses of and incidental to the proceedings, and all fees, commission and percentages payable to the Official Assignee shall be made in the following manner :—

[Set out proposal for provisions of fees, charges, costs, etc.]

3. That the following composition shall be paid as hereinafter mentioned on all provable debts :—

[Set out terms of composition.]

4. That the payment of the composition be secured in the following manner :—

[Set out full names and addresses of sureties (if any) and complete particulars of all securities intended to be given.]

Dated this day of 190 .

(Signed) (a)

(a) To be signed by the insolvent ; in case of joint insolvents, to be signed in the firm's name by such of the insolvents as the Official Assignee shall require.

No. 17 (SEE RULE 110).

PROPOSAL FOR A SCHEME.

(Title.)

I, _____, the above-named insolvent, hereby submit the following proposal for a scheme of arrangement of my affairs in satisfaction of my debts :—

1. That—

[Set out terms of Scheme.]

2. That payment in priority to all other of my debts of all debts directed to be so paid in the distribution of the property of an insolvent is provided for as follows :—

[Set out or indicate by reference to the Scheme how it is proposed to satisfy preferential claims.]

3. That provision for payment of all the proper costs, charges and expenses of and incidental to the proceedings, and all fees, commission and percentages payable to the Official Assignee is provided for as follows :—

[Set out or indicate by reference to the Scheme how it is proposed to provide for fees, costs, charges, etc.]

[Set out any other terms.]

Dated this _____ day of _____ 19____

(Signed.) (a)

(a) To be signed by the insolvent or in the case of joint insolvents to be signed in the firm's name by such of the insolvents as the Official Assignee shall require.

No. 18 (SEE RULE 110).

NOTICE OF MEETING WHERE INSOLVENT SUBMITS AN OFFER OF
COMPOSITION OR SCHEME.*(Title.)*

[Under adjudication order, dated the day of
19 .]

Notice is hereby given that a general meeting of the creditors of the above-named insolvent will be held at on the day of 19 , at o'clock in the noon precisely.

Creditors qualified to vote at such meeting may, by a resolution passed by a majority in number, and three-fourths in value, of all the creditors who have proved their debts, accept the proposal made by the insolvent for a composition [or scheme], the terms of which are set forth in the accompanying report, or any amendment of such proposal which in the opinion of the Official Assignee is calculated to benefit the general body of creditors.

Proofs of debts intended to be used at the meeting must be lodged with the Official Assignee not later than o'clock on the day of 19 .

Proxies and voting letters to be used at the meeting must be lodged not later than o'clock on the day of 19 .

Creditors who prove their debts, and whose proofs are admitted, and who do not vote on the insolvent's proposal, will be reckoned as voting against it. Dated this day of 19 .

Official Assignee.

Address.

Notes.

1. Creditors who have proved may vote for or against the acceptance of the insolvent's proposal by means of the voting letter attached to the Official Assignee's report.

2. A form of proof and forms of general and special proxy and a summary of the schedule of affairs are sent herewith.

No. 19 (SEE RULE 110).

REPORT OF OFFICIAL ASSIGNEE TO CREDITORS ON PROPOSAL FOR
COMPOSITION OR SCHEME AND VOTING LETTER.

(Title.)

The Official Assignee of the above estate hereby reports :—

That the insolvent has lodged with him a proposal for a composition [or scheme] to be submitted to the creditors, of which the following is a copy :—

[Here set out fully the terms of proposal.]

That the liabilities, as shown by the insolvent's schedule of affairs, amount to the sum of Rs. , and the assets are estimated by the insolvent at the sum of Rs. after payment of preferential debts.

That the value of the assets is [fairly estimated by the insolvent] [or, as the case may be].

That the terms of the insolvent's proposal [set out particulars of proposal and observations on the proposal and the insolvent's conduct].

Dated this day of 19 .

Official Assignee.

Address.

VOTING LETTER.

(Title.)

I, _____ of _____, a creditor in the above matter for the sum of Rs. _____, hereby request the Official Assignee of the said estate to record my vote (a) _____ the acceptance of the proposal as set forth in the report of the Official Assignee hereto annexed, ^{and}_{or} (b) _____ any amendment thereof which shall, in the opinion of the Official Assignee, be calculated to benefit the general body of the creditors.

Dated this _____ day of _____ 19 .

Signature of creditor.

Signature of witness.

Address.

(a) Insert here the word "for" or the word "against" as the case may require.

(b) Creditors may, if they think fit, authorize the Official Assignee to vote "against" the proposal now submitted, but "for" such amendment thereof as may be satisfactory to the Official Assignee.

No. 20 (SEE RULE 117).

CONTENTS OF ORDER ON APPLICATION TO APPROVE COMPOSITION.

(Title.)

On the application of _____, and on reading the report of the Official Assignee, filed on the _____ day of _____, and hearing the Official Assignee and _____ and the Court being satisfied that the creditors in the above matter have duly accepted a composition [or scheme] in the following terms, namely [here insert terms if short ; if not, insert " in the terms contained in the paper writing marked A annexed hereto "]* and being satisfied that the said terms are reasonable and calculated to benefit the general body of creditors, and that the case is not one in which the Court would be required to refuse an order of discharge.†
[and as the case may be]

And being satisfied

(a) That no facts have been proved which would justify the Court in refusing, qualifying or suspending an order of discharge ;
or

(b) That facts have been proved which would justify the Court in refusing, qualifying or suspending an order of discharge, but that having regard to the nature of such facts, and the composition [or scheme] providing reasonable security for payment of not less than _____ per cent. on all the unsecured debts provable against the insolvent's estate, _____ the said composition [or scheme] is hereby approved

or after*

and being satisfied that the said terms are not reasonable or calculated to benefit the general body of creditors.

and after†
or
and being satisfied
or

(a) That the case is one in which the Court would be required to refuse the insolvent's discharge.

(b) That facts have been proved which would under the Act justify the Court in refusing, qualifying or suspending the insolvent's discharge, the Court doth refuse to approve the said composition [or scheme].

Dated this

day of

19

.

No. 21 (SEE RULE 129).

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND.

(Title.)

A (a) dividend is intended to be declared in the above matter. You are mentioned in the Insolvent's Schedule of affairs, but you have not yet proved your debt.

If you do not prove your debt by the day of 19
you will be excluded from this dividend.

Dated this day of 19

Official Assignee.

To X. Y.

[Address.]

(a) Insert here "first" or "second" or "final" or as the case may be.

No. 22 (SEE RULE 129).

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION
TO DECLARE FINAL DIVIDEND.

(Title.)

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 19 or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 19

Official Assignee.

To X. Y.

Address.]

No. 23 (SEE RULE 132).

NOTICE TO CREDITORS OF APPLICATION FOR DISCHARGE.

(Title.)

Take notice that the above-named insolvent has applied to the Court for his discharge, and that the Court has fixed the day of 19 at o'clock for hearing the application.

Dated this day of 19

Official Assignee.

No. 24 (SEE RULE 136).

**CONSENT OF INSOLVENT TO DECREE BEING PASSED FOR BALANCE
OR PART OF BALANCE OF PROBABLE DEBTS.***Re*

I, A. B., of _____, the above-named insolvent, do hereby consent to a decree being passed against me in the High Court of Judicature at Fort William in Bengal [or as the case may be] by the Official Assignee for the sum of Rs. _____, being the balance or part of the balance of the debts provable under my insolvency which is not satisfied at the date of my discharge ; but this consent is subject to the provision contained in the Presidency Towns Insolvency Act, 1909, with regard to the issue of execution on such decree.

Dated this _____ day of _____ 19 ____ .

(Signed) A. B.

No. 25 (SEE RULE 136).

DECREE TO BE PASSED PURSUANT TO THE CONSENT (IN THE HIGH COURT).

Suit No. of 19 .

In the High Court of Judicature at Fort William in Bengal.

Between

Plaintiff,

and

Defendant.

And in the matter of the insolvency of the said A. B.

The day of 19

Pursuant to the order of this Court in Insolvency date 1 the day of , whereby it was ordered that

[Recite substance of order.]

And the consent mentioned in the said order having been given and filed in the matter of the said insolvency.

It is this day decreed that the plaintiff recover against the said defendant Rs. , together with Rs. for costs of decree.

Dated this day of 19 .

Seal.

No. 26 (SEE RULE 137).

CONTENTS OF ORDER OF DISCHARGE SUBJECT TO CONDITIONS AS TO
EARNINGS, AFTER-ACQUIRED PROPERTY, AND INCOME.

(Title.)

On the application of _____, adjudged Insolvent on the day of _____ 19____, and upon taking into consideration the report of the Official Assignee as to the Insolvent's conduct and affairs, and (a)

And whereas it has not been proved (b)

It is ordered that the Insolvent be discharged subject to the following conditions as to his future earnings, after-acquired property, and income :—

After setting aside out of the Insolvent's earnings, after-acquired property and income, the yearly sum of Rs. _____ for the support of himself and his family, the Insolvent shall pay the surplus, if any [or such portion of such surplus as the Court may determine], of such earnings, after-acquired property and income to the Official Assignee for distribution among the creditors in the insolvency. An account shall, on the first day of January in every year, or within fourteen days thereafter, be filed in these proceedings by the insolvent, setting forth a statement of his receipts from earnings, after-acquired property and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the insolvent to the Official Assignee within fourteen days of the filing of the said account.

Dated the _____ day of _____ 19____

Registrar.

(a) Further recitals to be inserted.

(b) This recital to follow the other forms, with necessary variations.

No. 27 (SEE RULE 137).

CONTENTS OF ORDER OF DISCHARGE SUBJECT TO A CONDITION RE-
QUIRING THE INSOLVENT TO CONSENT TO DECREE BEING PASSED
AGAINST HIM.

(Title.)

On the application (a)

It is ordered that the Insolvent be discharged subject to the following condition to be fulfilled before his discharge takes effect, namely, he shall, before the signing of this order, consent to a decree being passed against him in this Court by the Official Assignee for the sum of Rs. , being the balance [or part of the balance] of the debts provable in the insolvency which is not satisfied at the date of this order, and Rs. costs of decree.

And it is further ordered, without prejudice and subject to any execution which may be issued on the said decree with the leave of the Court, that the said sum of Rs. be paid out of the future earnings or after-acquired property of the Insolvent in manner following, that is to say, after setting aside out of the Insolvent's earnings and after-acquired property a yearly sum of Rs. for the support of himself and his family, the Insolvent shall pay the surplus if any [or such portion of such surplus as the Court may determine], to the Official Assignee for distribution among the creditors in the insolvency. An account shall, on the 1st day of January in each year, or within fourteen days thereafter, be filed in these proceedings by the Insolvent setting forth a statement of his receipts from earnings, after-acquired property and income, during the year immediately preceding the said date and the surplus payable under this order shall be paid by the Insolvent to the Official Assignee within fourteen days of the filing of the said account.

And it is further ordered that, upon the required consent being given, a decree may be passed against the Insolvent in this Court for the said sum of Rs. together with Rs. for costs of decree.

Dated this day of 19

Registrar.

No. 28 (SEE RULE 141).

**AFFIDAVIT BY INSOLVENT, WHOSE DISCHARGE HAS BEEN GRANTED
CONDITIONALLY AS TO AFTER-ACQUIRED PROPERTY OR
INCOME.**

(Title.)

I, the abovenamed Insolvent, make oath [or solemn affirmation] and say as follows :—

1. I have since the date of my discharge resided and carried on business at , and I now reside and carry on business at

2. The statement hereto annexed is a full, true, and complete account of all moneys earned by me and of all property and income acquired as received by me since the date of my discharge [or, since the date when last I filed a statement of after-acquired property and income in Court, namely the day of 19].

Sworn [or solemnly affirmed, etc.].

(Signature of Insolvent.)

No. 29 (SEE RULE 143).

GENERAL PROXY.

(Title.)

I, (a) of , a creditor, hereby appoint (b)
to be (c) general proxy in the above matter [excepting
as to the receipt of dividend (d)].

Dated this day of 19 .

[Signed.] (e)

Signature of witness.

Address.

(a) If a firm, write "We" instead of "I," and set out the full name of the firm.
(b) Here insert either "Mr. , of , a clerk, manager, etc., in my regular employ" or "the Official Assignee in the above matter." The standing of the person appointed must be clearly set out.
(c) "my" or "our."
(d) See footnote 1.

NOTES.

1. When the creditor desires that his general proxy should receive dividends, he should strike out the words "excepting as to the receipt of dividend," putting his initials thereto. (f)

2. The authorized agent of a corporation may fill up blanks, and sign for the corporation, thus :—

For the Company.
J. S. (duly authorized under the seal
 of the Company).

3. A proxy given by a creditor may be filled up and signed by any person having a general authority in writing to sign for such creditor. Such person shall sign,

J. S. [duly authorized by a general authority
in writing to sign on behalf of (name of
creditor)]. (g)

(e) If a firm, sign the firm's trading title, and add "by A. B., a partner in the said firm."

As to signature by agent, see footnotes 2 and 3.

(f) It is not intended that the Official Assignee shall in any case receive dividends on behalf of a creditor.

(g) The Official Assignee may require the authority to sign to be produced for his inspection.

Certificate to be signed by person other than creditor filling up the above proxy.

I, of , being a (here state whether clerk or manager in the regular employment of the creditor or a Commissioner to administer oaths), hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the abovenamed and in his presence, before he attached his signature [or mark] thereto.

Dated this day of 19 .

(Signature.)

The proxy must be lodged with the Official Assignee not later than the day before the meeting at which it is to be used.

No. 30 (SEE RULE 143).

SPECIAL PROXY.

(Title.)

I, (a) of , a creditor, hereby appoint (b) as (c) proxy at the meeting of creditors to be held on the day of 19 , or at any adjournment thereof, to vote (d)

Dated this day of 19 .

[Signed.] (e)

Signature of Witness.

Address.

NOTES.

1. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

- (a) For or against any specific proposal for a composition or scheme of arrangement ;
- (b) For or against the appointment of any specified person as member of the Committee of Inspection, or for or against the continuance in office of any specified person as trustee or member of a Committee of Inspection ;
- (c) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

2. The authorized agent of a corporation may fill up blanks and sign for the corporation, thus :—

“ For the Company.
J. S. (duly authorized under the seal of the Company).”

(a) If a firm, write “ We ” instead of “ I,” and set out the full name of the firm.

(b) Here insert either “ Mr. of ” or “ the Official Assignee in the above matter.”

(c) “ my ” or “ our.”

(d) Here insert the word “ for ” or the word “ against ” as the case may require, and specify the particular resolution, or other matter.

(e) If a firm, sign the firm's trading title, and add “ by A. B., partner in the said firm.”
As to signature by agent, see notes 1 and 2.

3. A proxy given by a creditor may be filled up and signed by any person having a general authority in writing to sign for such creditor. Such person shall sign,

J. S. [duly authorized by a general authority in writing to sign on behalf of (name of creditor)]. (f)

Certificate to be signed by person other than creditor filling up the above proxy.

I, of , being a (here state whether clerk or manager in the regular employment of the creditor or a Commissioner to administer oaths), hereby certify that all insertions in the above proxy are in my own handwriting and have been made by me at the request of the above-named and in his presence before he attached his signature [or mark] thereto.

Dated this day of 19 .

(Signature.)

The proxy must be lodged with the Official Assignee not later than the day before the meeting at which it is to be used.

(f) The Official Assignee may require the authority to sign to be produced for his inspection.

NO. 31 (SEE RULE 157).

APPLICATION FOR SUMMARY ADMINISTRATION UNDER SECTION 106.

(Title.)

I, G. H., the Official Assignee in the above matter, hereby report to the Court that the property of the insolvent is not likely to exceed in value Rs. 3,000, and I apply that the Court may order the estate to be administered in a summary manner pursuant to Section 106 of the Act.

Dated this day of 19 .

G. H.,
Official Assignee.

NO. 32 (SEE RULE 159).

CREDITOR'S PETITION FOR ADMINISTRATION OF ESTATE OF DECEASED DEBTOR UNDER SECTION 108.

(Title.)

I, C. D., of (or we, C. D., of ,
and E. F., of) hereby petition the Court,
that an order be made for the administration in Insolvency of the

estate of the late (here insert name and description of deceased debtor), who died on the day of 19 , and say

1. That the said A. B. for the greater part of the six months next preceding his decease resided (or carried on business) at within the limits of the Ordinary Civil Jurisdiction of this Court (or, as the case may be, following the terms of Section 11).

2. That the estate of the said A. B. is justly and truly indebted to me (or us in the aggregate) in the sum of Rs. (set out amount of debt or debts and the consideration).

3. That (I) do not nor does any person on (my) behalf hold any security on the said deceased debtor's estate, or on any part thereof, etc. (or, as in Form No. 8 Creditor's Petition).

4. That A. B. within three months next before the said date of his decease committed the following act (or acts) of Insolvency, namely (here set out the nature and date or dates of the act or acts of Insolvency relied on);

or

That the Will of the said A. B. (or, as the case may be) was on the day of 19 , proved by J. S. of . and G. H., of , who consent to this petition ;

or

That Letters of Administration (or, as the case may be) were on the day of 19 , proved by J. S., of , and G. H., of , and that the estate of the said A. B. is (according to my information and belief) insufficient to pay his debts.

Dated this day of 19 .
(Signed) C. D.

E. F.

(Verified by affidavits as in Form No. 8.)

No. 33 (SEE RULE 162).

CONTENTS OF ORDER FOR ADMINISTRATION IN INSOLVENCY OF ESTATE OF DECEASED DEBTOR UPON PETITION.

(Title.)

Upon the petition of C. D., dated , and numbered of 19 , and upon reading and hearing it is ordered that the estate of A. B. of , who died insolvent, be administered in Insolvency, and that the costs of this application be

Dated this day of 19 .

Registrar.

Register of Petitions to be kept by Registrar of the Insolvency Court.

[illegible]

No. 36 (SEE RULE 166).

Register of Adjudication Orders to be kept by Registrar of the Insolvency Court.

No. of Adjudication Order.	
No. of Petition.	
Date of Petition.	
Date of Adjudication Order.	
Date of Public Examination.	
Date of approval of Composition or Scheme.	
Date of hearing Application for Discharge.	
Date of Order of Discharge.	
Result of Application and Conditions (if any).	
Date of annulling Adjudication.	
Proceedings consolidated or transferred.	
Date of Order for Summary Administration (Section 106).	
Date of Order for Administration of Deceased's Estates (Section 108).	

No. 37 (SEE RULE 191).

Certificate by Committee of Inspection as to audit of Official Assignee's Accounts.

We, the undersigned, members of the Committee of Inspection in the matter of _____, an Insolvent, hereby certify that we have examined the foregoing account]with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true and complete account of the Official Assignee's receipts and payments on account of the estate.

Dated this day of 19 .

A. B. }
C. D. } *Committee of Inspection.*
E. F. }

No. 38 (SEE RULE 197).

NOTICE OF INTENTION TO DISCLAIM LEASE.

(Title.)

Take notice that I intend to disclaim the lease dated _____ whereby [here specify property let] was let to the abovenamed debtor at a rent of Rs. _____

If you do not within seven days after service of this notice upon you require me by notice in writing to bring the matter before the Court, I hereby disclaim the said lease as from the expiration of the said seven days.

Dated

To Mr. X. Y.

Official Assignee.

No. 39 (SEE RULE 197).

NOTICE TO LANDLORD OF INTENTION TO DISCLAIM LEASEHOLD PROPERTY NOT SUB-LET OR MORTGAGED.

(Title.)

Take notice that I intend to disclaim the (a) dated
whereby (b) was let to the abovenamed debtor at a rent
of Rs.

If you require the matter to be brought before the Court, you
must give notice thereof to me in writing within seven days of the
receipt by you of this notice.

Dated this day of 19 .

Official Assignee.

Address.

To

The landlord of the abovementioned property.

(a) Lease or tenancy as the case may be
(b) Here specify property let.

No. 40 (SEE RULE 197).

**NOTICE OF INTENTION TO DISCLAIM LEASEHOLD PROPERTY SUB-LET
OR MORTGAGED.**

(Title.)

Take notice that I intend to disclaim the lease dated
whereby (a) was let to (b) at a rent of
Rs.

If you require the matter to be brought before the Court, you
must give notice thereof to me in writing within fourteen days of the
receipt by you of this notice.

Dated this day of 19 .

Official Assignee.

Address.

To Mr.

The Mortgagee or Sub-tenant.

(a) Here insert particulars of demised property.
(b) The abovenamed insolvent or as the case may be.

No. 41 (SEE RULE 197).

NOTICE OF DISCLAIMER WITHOUT THE LEAVE OF THE COURT.
(Title.)

Take notice that, by writing under my hand, bearing date the
 day of 19 , I , the Official
 Assignee of the property of the abovenamed Insolvent, disclaimed
 (a) of the premises known as (b) which were let to (c)
 at a rent of Rs. per (d) .

The abovementioned disclaimer has been filed in Court with the
 proceedings in the Insolvency.

Your attention is directed to the provisions of the Presidency
 Towns Insolvency Act printed on the back hereof.

Dated this day of 19 .

Official Assignee.

Address.

NOTE.—On the back of this notice the provisions of Sections 63, 65, 66 and 67 of the Presidency
 Towns Insolvency Act, 1909, should be printed.

-
- (a) The lease dated the day of or as the case may be.
 (b) Insert description of property disclaimed.
 (c) On a tenancy or for the term of years, or as the case may be.
 (d) Add, where necessary, “ pursuant to notice dated the day of 19

TABLE OF FEES.

MADE AND ESTABLISHED UNDER THE INDIAN INSOLVENCY ACT, 1848.

[REFERRED TO IN INSOLVENCY RULE 50.]

Officers' Fees.

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
For filing petition, including entry of the same in the record book	0	0	
For filing Schedule (or amended Schedule) with estate paper annexed, and entering	0	0	
For every other document which requires to be filed	8	0	
For minuting in the minute-book, every rule and proceeding, and for every copy thereof, each, per folio of 90 words	0	5	0
For the drawing and fair copying of every warrant to the Sheriff to bring up a prisoner, or to discharge, release, or further imprison him, and of vesting, interim, and other orders, each, per folio	0	5	0
For office copies of all proceedings or accounts, per folio	0	5	0
For every certificate	1	0	0
For each search in his office in answer to enquiry	1	0	0
For reading and making every exhibit or other proceedings read in Court	0	8	0
For each subpoena	1	0	0
For entering notice of opposition	0	8	0
For entering a case in the list of cases for each day's hearing	1	0	0
For every attendance before the Supreme Court with records, books or papers, from his office, on cases appealed or order	0	0	
For affixing the seal	0	0	
For every attendance on the Court, or a Judge at Chambers, with papers from his office, by order of the Court, or a Judge, or at the request of any party.	0	0	
For every summons and every precept, each	0	0	
For investigations of accounts and other matters referred by the Court, and for reporting thereon to the Court, for each hour employed thereon	16	0	0
Ditto, for less than an hour	10	0	0
For preparing every notice and advertisement per folio, including sending the same to the Gazette.	5	0	
For taking down every examination of a prisoner, or deposition of a witness, per folio	5	0	
For making a fair copy thereof to be filed in Court (besides parchment), per folio	5	0	
To any Commissioner for taking any affidavit at the gaol (including attendance and explanation)	0	0	

The Taxing Officer.

For taxing every bill of costs, if the amount be less than two hundred rupees	0	0	
If two hundred or more, then for each hundred	0	0	
For every summons	0	0	
For every certificate	0	0	
	2	R	

The Taxing Officer—contd.

	<i>Rs.</i>	<i>a.</i>	<i>p.</i>
For every oath administered, and affidavit sworn before him	1	0	0
For every office copy when required, per folio	0	5	0

The Judge's Interpreters.

For translation, per folio	1	0	0
For calling on each petition to be heard	1	0	0
For every oath administered to the prisoner and the witnesses, each	1	0	0

The Sheriff.

For bringing up each prisoner before the Court or a Judge, or before examiner, or referee on order	2	0	0
For every warrant to the gaoler to discharge a defendant	1	0	0
For filing all warrants and orders	1	0	0
For every search in his office	1	0	0
For every certificate	1	0	0

The Gaoler.

For every certificate	1	0	0
For attending with a prisoner before the Court or a Judge, or before any officer to whom the Court shall refer any matter for investigation or order	1	2	0
For forms to prisoner, assistance in filing up, attestation, delivery, etc., as in rule mentioned	16	0	0

The Messenger.

For every service by the general post	0	2	0
For serving each notice in Calcutta or within five miles thereof	0	12	0

The Broker.

For valuing, appraising, and certifying the excepted articles, if within five miles of Calcutta	16	0	0
For every additional mile he shall travel beyond that distance	1	0	0

Attorney's Fees.

Attendance in prison, taking instructions for petition	6	9	0
Notice to Sheriff and service	2	0	0
Drawing and engrossing petition	3	0	0
Preparing and attesting estate papers, each	2	0	0
Ditto, if second page written, additional	1	0	0
Attending to lodge or file petition with accompanying documents	3	5	0
Attendance in prison, taking instructions for schedule	6	9	0
Drawing schedule, per folio of 90 words	0	9	0

Attorney's Fees—contd.

	<i>Rs.</i>	<i>s.</i>	<i>p.</i>
When the number of debtors exceeds 20, then for the excess above 20, per folio only 5 annas, viz., two words to be computed as one	0	5	0
Engrossing schedule and estate paper, and duplicate thereof, per folio	0	5	0
Fair copy for prisoner, if required, per folio	0	5	0
General balance sheet, common case	5	0	0
Ditto, per additional sheet	2	7	0
Drawing and engrossing petition and affidavit for leave to file petition or schedule (time being passed) on printed form, common case	4	0	0
Drawing and engrossing it another half sheet is necessary for the debtor and creditor account, additional	1	7	0
All attendance relating to any application to the Court	6	0	0
Attending at prison, reading over and attesting schedule and estate paper	6	9	0
Attending to file schedule and for order for hearing	3	5	0
Attending Insolvent for his books, etc., indorsing the same, and lodging them at the office	3	5	0
Attendance to insert advertisement	3	5	0
Copies of order to serve or annex, and examining, including letters for service by the post, and attending at the Post Office to put in the same, each	0	5	0
Attending messenger to deliver order, copies for service, and lists, and for their return	3	5	0
For all lists delivered to messenger, in each case	1	7	0
Ditto, in respect of each notice specified in such lists, additional	0	2	0
Searching with the Sheriff, for detainers	2	7	0
Searching for notice of opposition	2	7	0
Attending Court on days of hearing	0	0	0
Attending for order of adjudication and delivering the same to the Insolvent	2	7	0
Drawing and engrossing affidavits of service of rules, per folio	0	5	0
Ditto, other affidavits than abovementioned, per folio	0	0	0
Taking instructions for special affidavits	3	5	0
Taking instructions for brief, for Insolvent	3	5	0
Instructing counsel on motion	5	0	0
Drawing brief for Insolvent, per sheet of 10 folios	3	5	0
For copying ditto, per sheet of 10 folios	2	7	0
Attending counsel, Court on motion, and other necessary attendance, not otherwise mentioned	3	5	0
Copy and service of rules within Calcutta	3	0	0
Writing and sending letters when absolutely necessary	2	7	0
Drawing advertisements	2	7	0
Fair copy ditto, for printer	1	0	0
Bills of costs with copies and getting the same taxed with affidavit and all expenses and attendances thereon, but not including the officer's fee in each case	5	0	0
Ditto, on further taxation after hearing	1	7	0
Letters, messages, stationery, etc., not otherwise charged	2	0	0
	2	2	2

TABLE

Showing which of the Old Rules have been omitted and New Rules corresponding to those which have been retained.

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
1	Omitted.	26a	Ch. IV, r. 27.	51	Omitted.
2 & 3	<i>Cf.</i> Ch. IV, r. 1 and Ch. XXV, r. 1.	26b	Ch. IV, r. 28.	51a	Ch. V, r. 1.
4	Ch. IV, r. 6.	26c	<i>Cf.</i> Ch. IV, r. 26, Ch. XXVI, r. 44.	52	Omitted. See Appellate Side Rules as to the constitution of Benches.
5	<i>Cf.</i> Ch. IV, r. 15.	26d	<i>Cf.</i> Ch. IV, r. 25.	53	
6	<i>Cf.</i> Ch. XXXVIII, r. 71.	26e	Ch. IV, r. 32.	60	
7	<i>Cf.</i> Ch. XXXVIII, r. 72.	26f	Omitted.	61	
8	Omitted.	26g	Ch. IV, r. 34.	62	Omitted.
9	<i>Cf.</i> Ch. VIII, r. 1.	26h	Ch. IV, r. 35.	69	
9a	<i>Cf.</i> Ch. IV, r. 3.	27		70	<i>Cf.</i> Ch. 11, r. 1.
10	<i>Cf.</i> Ch. IV, r. 19, Ch. VIII, r. 1.	28		71	<i>Cf.</i> Ch. 11, r. 4.
11	<i>Cf.</i> Ch. IV, r. 19.	28a	Omitted.	72	Ch. 11, r. 4 (proviso).
12	Omitted—but see Table to rule 32 of Ch. XXXVI.	29		73	<i>Cf.</i> Ch. 11, r. 5.
13	Omitted.	30		74	Ch. 11, r. 6.
14	<i>Cf.</i> Ch. IV, rr. 9 & 10.	31	First portion omitted. Second portion <i>Cf.</i> Ch. XXV, r. 9.	75	Omitted.
15	Omitted.	32	Ch. XXV, r. 10.	76	<i>Cf.</i> Ch. I, r. 73.
16	<i>Cf.</i> Ch. IV, r. 13.	33	<i>Cf.</i> Ch. XXV, r. 11.	77	<i>Cf.</i> Ch. I, r. 74.
17	Omitted.	34	<i>Cf.</i> Ch. XV, r. 5 and, as to fees Ch. XXXVI, r. 80 and r. 55.	78	<i>Cf.</i> Ch. I, r. 1.
18	<i>Cf.</i> Ch. IV, r. 14.	35	Ch. XXXVIII, rr. 48 to 53.	79	<i>Cf.</i> Ch. I, r. 3.
19 & 20	<i>Cf.</i> Ch. XXI, rr. 10 to 19.	36		80	<i>Cf.</i> Ch. I, r. 5.
20	<i>Cf.</i> Ch. XXI, r. 5.	37		81	Ch. I, r. 6.
21a	<i>Cf.</i> Ch. XXI, r. 21.	38		82	<i>Cf.</i> Ch. I, r. 7.
22	<i>Cf.</i> Ch. IV, r. 21.	39		83	Ch. I, r. 8.
23	<i>Cf.</i> Ch. IV, r. 24.	40		84	<i>Cf.</i> Ch. I, r. 14.
24	Omitted. See rr. 25 & 26 of Ch. IV.	41		85	<i>Cf.</i> Ch. I, r. 15.
25		42		86	<i>Cf.</i> Ch. I, r. 16.
26		43		87	<i>Cf.</i> Ch. I, r. 18.
		44		88	Ch. I, r. 19.
		45		89	Ch. I, r. 20.
		46		90	<i>Cf.</i> Ch. I, r. 21.
		47		91	<i>Cf.</i> Ch. I, r. 22.
		48		92	<i>Cf.</i> Ch. I, rr. 24 & 25.
		49		93	<i>Cf.</i> Ch. I, r. 27.
		50		94	<i>Cf.</i> Ch. I, r. 28.
				95	<i>Cf.</i> Ch. I, r. 29.
				96	Ch. I, r. 30.
				97	Ch. I, r. 31.
				98	Ch. I, r. 32.
				99	

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
100	<i>Cf.</i> Ch. I, r. 33.	168a	<i>Cf.</i> Ch. VII, r. 10.	199	<i>Cf.</i> Ch. VIII, r. 14.
101	<i>Cf.</i> Ch. I, r. 35.				
102	<i>Cf.</i> Ch. I, r. 34.	168b	Ch. VII, r. 2.	200	<i>Cf.</i> Ch. XXV, r. 2.
103	<i>Cf.</i> Ch. I, r. 35.	169	<i>Cf.</i> Ch. VII, r. 4.	201	<i>Cf.</i> Ch. VIII, rr. 3 & 6.
104	<i>Cf.</i> Ch. I, r. 36.				
105	Ch. I, r. 37.	170	Omitted.	202	Omitted.
106	Ch. I, r. 38.	171	<i>Cf.</i> Ch. VII, r. 12.	203	Ch. XXV, r. 3.
107	Ch. I, r. 39.			204	<i>Cf.</i> Ch. XXV, r. 4.
108	<i>Cf.</i> Ch. I, r. 26.	172	<i>Cf.</i> Ch. XXXVIII, r. 58.	205	Omitted.
109	Ch. I, r. 40.			206	<i>Cf.</i> Ch. VIII, r. 15.
110	<i>Cf.</i> Ch. I, rr. 41, to 44.	173	Omitted.		
111	Ch. I, r. 45.	174	Ch. VII, r. 7.	207	Ch. VIII, r. 16.
112	Ch. I, r. 46.	175	Ch. VII, r. 8.	208	Ch. VIII, r. 17.
113	Ch. I, r. 47.	176	<i>Cf.</i> Ch. VIII, r. 6.	209	<i>Cf.</i> Ch. VIII, r. 19.
114	Ch. I, r. 48.	177 }	Omitted.	210	<i>Cf.</i> Ch. X, r. 25.
115	Ch. I, r. 50.	178 }		211	<i>Cf.</i> Ch. X, r. 27.
116	Ch. I, r. 51.	179	<i>Cf.</i> Ch. VIII, r. 5.	212	Ch. X, r. 34.
117	Ch. I, r. 52.			213	Ch. XXXVIII, r. 69.
118	Ch. I, r. 53.	180	<i>Cf.</i> Ch. VIII, r. 7.	214	Omitted.
119	<i>Cf.</i> Ch. I, r. 54.			215	<i>Cf.</i> Ch. VIII, r. 20.
120	<i>Cf.</i> Ch. I, r. 55.	181	<i>Cf.</i> Ch. VIII, r. 10.	216 }	Omitted.
121	<i>Cf.</i> Ch. I, r. 56.			217 }	
122	<i>Cf.</i> Ch. I, r. 57.	182	<i>Cf.</i> Ch. VIII, r. 2.	218	<i>Cf.</i> Ch. IX, r. 1.
123	Ch. I, r. 58.			219	Omitted.
124	<i>Cf.</i> Ch. I, r. 59.	183	<i>Cf.</i> Ch. VIII, r. 4.	220 }	<i>Cf.</i> Ch. IX, r. 1.
125	<i>Cf.</i> Ch. I, r. 60.			221 }	
126	<i>Cf.</i> Ch. I, r. 61.	184	<i>Cf.</i> Ch. VIII, r. 3.	222	<i>Cf.</i> Ch. VIII, r. 4.
127 }	Ch. I, rr. 62 to 68.	185	Omitted.	223	<i>Cf.</i> Ch. VII, r. 4.
133 }		186 }	<i>Cf.</i> Ch. VIII, rr. 4 & 5, and see Forms 2 and 3, Appendix B.	224	<i>Cf.</i> Ch. IX, r. 5.
134	Omitted.	187 }		225	Omitted.
135	Ch. II, r. 7.			226	<i>Cf.</i> Ch. IX, r. 2.
136	<i>Cf.</i> Ch. II, r. 8.	188	<i>Cf.</i> Ch. VIII, rr. 9 & 13.	227	Ch. IX, r. 12.
137 }	Omitted.			228	Ch. IX, r. 6.
138 }		189	See Ch. VIII, r. 13, last clause.	229	Ch. IX, r. 7.
139	<i>Cf.</i> Ch. VIII, rr. 15 & 24.			230	Omitted.
140	<i>Cf.</i> Ch. II, r. 11.	190	Omitted.	231	<i>Cf.</i> Ch. IV, r. 9.
141	<i>Cf.</i> Ch. XXXVIII, r. 68.	191	<i>Cf.</i> Ch. VIII, r. 21.	232	Ch. IX, r. 8.
142	<i>Cf.</i> Ch. II, r. 12.	192	<i>Cf.</i> Ch. VIII, r. 23.	233	Ch. IX, r. 9.
142a	Ch. XXXVIII, r. 67.			234	<i>Cf.</i> Ch. IV, r. 9.
143 }	Rules as to Vakils ; omitted.	195	<i>Cf.</i> Ch. VIII, r. 24.	235	Ch. IX, r. 10.
165 }		196	Ch. VIII, r. 27.	236	<i>Cf.</i> Ch. IX, r. 11.
166	Omitted.	197	<i>Cf.</i> Ch. VIII, r. 14.	237	Ch. VII, r. 13.
167	<i>Cf.</i> Ch. VII, r. 11.			238	Omitted.
168	<i>Cf.</i> Ch. VII, r. 1.	198	<i>Cf.</i> Ch. VIII, r. 6.	238a	<i>Cf.</i> Ch. VII, r. 3.

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
239	<i>Cf.</i> Ch. IV, r. 9.	295	Ch. X, r. 37.	334	Ch. XVI, r. 26."
240	Omitted. See note at head of Ch. XI.	296	Ch. X, r. 38.	335	<i>Cf.</i> Ch. XVI, r. 29.
to } 248		297	<i>Cf.</i> Ch. X, r. 39.		
249		298	<i>Cf.</i> Ch. X, r. 40.		
	<i>Cf.</i> Ch. XI, r. 5.	299	Ch. X, r. 41.	336	Ch. XVI, r. 30.
250	Omitted. See note at head of Ch. XI.	300	<i>Cf.</i> Ch. X, r. 1(7).	337	<i>Cf.</i> Ch. XVI, rr. 31 to 34.
to } 261		301	<i>Cf.</i> Ch. XII, r. 1.	340	
262		302	<i>Cf.</i> Ch. XII, r. 2.	341	
263	Ch. XI, r. 6.	303	<i>Cf.</i> Ch. X, r. 4.	343	Omitted.
264	Omitted.	304	<i>Cf.</i> Ch. X, r. 5.		
to } 269a		305	<i>Cf.</i> Ch. X, r. 21.		
to g		306	<i>Cf.</i> Ch. X, r. 20.	344	<i>Cf.</i> Ch. XVII, r. 28.
270	<i>Cf.</i> Ch. XXII, r. 4.	307	<i>Cf.</i> Ch. XII, r. 4.	344a	<i>Cf.</i> Ch. XVII, r. 42.
271	Ch. XXXVIII, r. 38.	308	Omitted.	345 } 346 } 347	Omitted.
272	Ch. XXXVIII, r. 39.	308a	<i>Cf.</i> Ch. XII, r. 6.		
273	<i>Cf.</i> Ch. X, r. 2.	309	<i>Cf.</i> Ch. XIV, r. 6.		
274	Superseded rule.	310	Omitted.	348	<i>Cf.</i> Ch. XVII, r. 11.
275	<i>Cf.</i> Ch. VII, r. 5.	311	<i>Cf.</i> Ch. XIV, rr. 7 & 8.	349	<i>Cf.</i> Ch. XVII, r. 12.
276	<i>Cf.</i> Ch. X, r. 34.	312	Omitted.	350	Ch. XVII, r. 26.
277	Omitted.	313	Ch. XIV, r. 3.	351	Ch. XVII, r. 15.
278	<i>Cf.</i> Ch. X, r. 5.	314	<i>Cf.</i> Ch. XVI, r. 2.	352	Omitted.
279	<i>Cf.</i> Ch. X, r. 1.	315	<i>Cf.</i> Ch. XVI, rr. 1 & 5.	353	<i>Cf.</i> Ch. XVII, r. 9.
280	Superseded rules.	316	<i>Cf.</i> Ch. XVI, r. 20.	354	Omitted.
281		317	<i>Cf.</i> Ch. XVI, r. 21.	355	<i>Cf.</i> Ch. XVII, r. 13.
282		318	<i>Cf.</i> Ch. XVI, r. 11.	356	<i>Cf.</i> Ch. XVII, r. 14.
283	Omitted.	319	Omitted.	357 } 358 } 359	Omitted.
284	<i>Cf.</i> Ch. X, r. 23.	320	Ch. XVI, r. 18.		
285	Omitted. See however Ch. X, r. 29.	321	Ch. XVI, r. 12.		
286	Ch. X, r. 31.	322	Ch. XVI, r. 13.	360 } 364 } 365 } 366 }	<i>Cf.</i> Ch. XVII, rr. 19, 23.
287	<i>Cf.</i> Ch. X, r. 32.	323	<i>Cf.</i> Ch. XVI, r. 15.		
	Omitted. See note at head of Ch. X.	324	<i>Cf.</i> Ch. XVI, r. 11, last para.		
288	<i>Cf.</i> Ch. X, r. 19.	325 } 326 }	Omitted.	367	Omitted.
289	<i>Cf.</i> Ch. X, r. 33.	327	<i>Cf.</i> Ch. XVI, r. 16.	368	Ch. XVII, r. 30.
290	<i>Cf.</i> Ch. X, r. 13.	328	<i>Cf.</i> Ch. XVI, r. 17.		
291	<i>Cf.</i> Ch. X, r. 24.	329	<i>Cf.</i> Ch. XVII, r. 32.		
292	<i>Cf.</i> Ch. X, r. 25.	330	Ch. XVI, r. 14.	369	<i>Cf.</i> Ch. XVII, rr. 1 & 3.
293	Omitted. See Ch. X, r. 42.	331	<i>Cf.</i> Ch. XXIV, r. 1.	370	<i>Cf.</i> Ch. XVII, r. 2.
294	<i>Cf.</i> Ch. X, r. 30.	332	<i>Cf.</i> Ch. XVI, r. 8.	371 } 374 }	<i>Cf.</i> Ch. XVII, rr. 5 to 8.
294a	<i>Cf.</i> Ch. VII, r. 6.	333	Omitted.		
294b	Ch. XX, r. 1.				
294c	<i>Cf.</i> Ch. XX, r. 2.				

TABLE OF REFERENCE TO OLD RULES.

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
375	<i>Cf.</i> Ch. VI, r. 11(13), Ch. XXXVI, r. 56.	484 } 485 } 486 }	Omitted.	515b } 515c } 515d }	Ch. VI, r. 14. Ch. XVI, r. 25. <i>Cf.</i> Ch. VI, r. 23.
376 } to } 380 }	Ch. XXV, rr. 13 to 17.	492 } 492a }	See Ch. XXXIV, rr. 1 to 8.	515e } 515f }	Ch. VI, r. 22. <i>Cf.</i> Ch. XVI, r. 23.
381	<i>Cf.</i> Ch. XVII, r. 29.	493 }	Omitted.	516 }	<i>Cf.</i> Ch. VI, r. 3.
382	<i>Cf.</i> Ch. XVII, rr. 24 & 31.	494 } 495 }	Superseded rule.	517 }	<i>Cf.</i> Ch. VI, r. 5.
383 } to } 385 }	<i>Cf.</i> Ch. XVII, rr. 37 to 39.	496 } 497 }	<i>Cf.</i> Ch. XXXII, r. 3.	518 } 519 }	See Ch. VIII, r. 26.
386	Omitted.	498 }	<i>Cf.</i> Ch. XXXVIII, r. 61.	520	<i>Cf.</i> Ch. VI, r. 4.
387	<i>Cf.</i> Ch. XVII, r. 33.	499	Ch. XXXVIII, r. 59.	521	<i>Cf.</i> Ch. VI, r. 9.
388	<i>Cf.</i> Ch. XVII, r. 31.	500	Ch. XXXVIII, r. 60 (<i>cf.</i>).	522	Omitted.
389	<i>Cf.</i> Ch. XVII, r. 34.	501	Omitted.	523	<i>Cf.</i> Ch. VI, r. 19.
390 } 391 }	<i>Cf.</i> Ch. XVII, r. 35	502 } A502 }	<i>Cf.</i> Ch. XX, r. 7.	524	<i>Cf.</i> Ch. VI, r. 20.
392 } to } 452 }	See Ch. XXVII, rr. 1 to 62.	502a } 503 }	<i>Cf.</i> Ch. XX, r. 3.	525 } 526 }	Ch. VI, r. 21. Ch. VI, r. 16.
453	<i>Cf.</i> Ch. XXVII, r. 65.	504 } 504a }	<i>Cf.</i> Ch. XX, r. 6.	527 } 528 }	<i>Cf.</i> Ch. XXXVI, r. 56.
454	Ch. XXVII, r. 63.	504b }	Omitted.	529 } 530 }	Ch. VI, r. 17. <i>Cf.</i> Ch. VI, r. 3.
455	<i>Cf.</i> Ch. IV, r. 18.	504c }	Ch. XX, r. 16.	531 } 532 }	<i>Cf.</i> Ch. VI, r. 12.
456	<i>Cf.</i> Ch. XXVII, r. 64.	504d }	<i>Cf.</i> Ch. XX, r. 17.	533 }	<i>Cf.</i> Ch. VI, r. 15.
457 } to } 467 }	See Ch. XXVIII, rr. 1 to 11.	504e } 505 }	<i>Cf.</i> Ch. XX, r. 15.	537 }	Omitted.
468	<i>Cf.</i> Ch. XVI, r. 16.	506	<i>Cf.</i> Ch. XX, r. 10.	538 }	<i>Cf.</i> Ch. XXVI, rr. 17 to 21.
469	<i>Cf.</i> Ch. XXVIII, r. 12.	507 }	<i>Cf.</i> Ch. XX, r. 9.	539 }	<i>Cf.</i> Ch. XXVI, r. 26.
470	<i>Cf.</i> Ch. XXVII, r. 45.	512 }	<i>Cf.</i> Ch. XX, r. 42 to 47.	540 }	<i>Cf.</i> Ch. XXVI, r. 28.
471	Ch. XXVIII, r. 13.	513 }	<i>Cf.</i> Ch. VI, rr. 1, 11 & 12.	541 }	<i>Cf.</i> Ch. XXVI, r. 26.
472 } to } 476 }	Omitted.	518a } 513b }	<i>Cf.</i> Ch. VI, r. 1.	542 }	Omitted.
477	Ch. XXVIII, r. 14.	514 } 515 }	<i>Cf.</i> Ch. VI, r. 1.	543 }	Ch. XXVI, r. 29.
478 } to } 483 }	See Ch. XXIX, rr. 1 to 5.	515a }	<i>Cf.</i> Ch. XVI, r. 22.	544 }	<i>Cf.</i> Ch. XXVI, r. 31.
			<i>Cf.</i> Ch. VI, r. 12.	545 }	Omitted.
				546 }	Ch. XXVI, r. 24.
				547 }	Ch. XXVI, r. 4.
				548 }	<i>Cf.</i> Ch. XXVI, r. 6.

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
549	<i>Cf.</i> Ch. XXVI, r. 22.	587 } 588 }	Omitted.	657 } to 694 }	See Ch. XXIV, rr. 8 to 45.
550	<i>Cf.</i> Ch. XXVI, r. 23.	589 } to 593 }	<i>Cf.</i> Ch. XXVI, rr. 60 to 64.	695 696	Omitted.
551 } 552 }	<i>Cf.</i> Ch. XXVI, r. 22.	594	Ch. XXVI, r. 60.		<i>Cf.</i> (as to first para.) Ch. XXXVIII, r. 6 (as to last para) r. 1.
553	Ch. XXVI, r. 33.	595	Ch. XXVI, r. 71.		
554	<i>Cf.</i> Ch. XXVI, r. 35.	596	<i>Cf.</i> Ch. XXVI, r. 73.	697 } 698 }	<i>Cf.</i> Ch. XXXVIII, r. 1.
555 } 559 }	<i>Cf.</i> Ch. XXVI, rr. 37 to 41.	597 598 } to 608 }	Ch. XXVI, r. 72.	699	<i>Cf.</i> Ch. XXXVIII, r. 3.
560	Ch. XXVI, r. 43.	609	<i>Cf.</i> Ch. XXVI, r. 94.	700	<i>Cf.</i> Ch. XXVIII, r. 4.
561 } to 566 }	Omitted.	610	<i>Cf.</i> Ch. XXVI, r. 86.	701	<i>Cf.</i> Ch. XXXVIII, r. 5.
567	Ch. XXVI, r. 36.	611	Ch. XXVI, r. 87.	702	Ch. XXXVIII, r. 9.
568	Ch. XXVI, r. 52.	612 }	Omitted.	703	Omitted.
569	<i>Cf.</i> Ch. XXVI, rr. 8, 53 & 54.	613 }		704	Ch. XXXVIII, r. 7.
570	<i>Cf.</i> Ch. XXVI, r. 54, last para.	614	Ch. XXVI, r. 90.	705	Ch. XXXVIII, r. 8.
571	<i>Cf.</i> Ch. XXVI, r. 9.	615	Ch. XXVI, r. 89.	706	Ch. XXVIII, r. 13.
572	<i>Cf.</i> Ch. XXVI, r. 10.	616	Ch. XXVI, r. 91.		See Ch. XXXVII, rr. 7 to 27.
573	<i>Cf.</i> Ch. XXVI, rr. 1 & 2.	617	Ch. XXVI, r. 92.	707 } to 728 }	Ch. XXXIX, rr. 1 to 8.
574	<i>Cf.</i> Ch. XXVI, r. 2.	618	<i>Cf.</i> Ch. XXVI, r. 93.	729 } to 736 }	<i>Cf.</i> Ch. VIII, r. 1.
575	<i>Cf.</i> Ch. XXVI, r. 3.	619	Omitted.	737	
576	<i>Cf.</i> Ch. XXVI, r. 11.	619a	Ch. XIX, r. 1.	738 } 739 }	Omitted.
577	<i>Cf.</i> Ch. XXVI, r. 12.	620 } to 634 }	Omitted.	739a	<i>Cf.</i> Ch. IV, r. 16.
578	Omitted.	635	<i>Cf.</i> Ch. XIX, r. 4.	740	Omitted.
579	<i>Cf.</i> Ch. XXVI, r. 10.	636 }	Omitted.	741	<i>Cf.</i> Ch. IV, r. 26.
580	<i>Cf.</i> Ch. XXVI, r. 13.	643 }		742	Omitted—as to citations <i>Cf.</i> Ch. XXXV, r. 9.
581 } to 583 }	<i>Cf.</i> Ch. XXVI, r. 14.	644 } 645 }	See Ch. XXX, rr. 1 to 10.	743	<i>Cf.</i> Ch. XXXV, r. 9.
584	<i>Cf.</i> Ch. XXVI, r. 15.	646a } 646b }	Ch. XXXVIII, rr. 40 & 41.	744	<i>Cf.</i> Ch. XXXV, r. 10.
585	Ch. XXVI, r. 50.	647 } 648 }	Omitted.	745	<i>Cf.</i> Ch. XXXV, r. 7.
586	Ch. XXVI, r. 51.	649 } 650 }	Ch. XXIV, r. 4.	746	Omitted.
		651	Ch. XXIV, r. 5.	747	<i>Cf.</i> Ch. XXXV, r. 12.
		652	Ch. XXIV, r. 6.	748	Omitted.
		653	Omitted.		
		654	Ch. XXIV, r. 7.		
		655	Omitted.		
		656			

Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.	Old Rules.	Corresponding New Rules.
749	<i>Cf.</i> Ch. XXXV, r. 15.	777	<i>Cf.</i> Ch. XXXVI, rr. 12, 17 & 24.	799	<i>Cf.</i> Ch. XXXVI, r. 107.
749a to 749c }	Ch. XXXV, rr. 16 to 18.	778	<i>Cf.</i> Ch. XXXVI, r. 11.	800	Omitted.
750	<i>Cf.</i> Ch. XXXV, rr. 25 to 27.	779	<i>Cf.</i> Ch. XXXVI, r. 40 & Ch. II, r. 9.	801	<i>Cf.</i> Admiralty Rule 49.
751	<i>Cf.</i> Ch. XXXV, r. 30.	780	<i>Cf.</i> Ch. XXXVI, r. 3.	802	<i>Cf.</i> Ch. XXXVI, r. 74.
752 to 757 }	Omitted.	781 }	Omitted. See Ch. XXXVI, r. 6.	803	Ch. XXXVI, r. 75.
758	<i>Cf.</i> Ch. XXXV, r. 31.	782 }		804	Ch. XXXVI, r. 76.
759 }	Omitted.	783	<i>Cf.</i> Ch. XXXVI, rr. 6 & 82.	805	Ch. XXXVI, r. 77.
760 }		784	Ch. XXXVI, r. 36.	806	<i>Cf.</i> Ch. XXXVI, r. 78.
761	<i>Cf.</i> Ch. XXXV, r. 32.	785	<i>Cf.</i> Ch. XXXVI, r. 6.	807	<i>Cf.</i> Ch. XXXVI, r. 81.
762	Omitted.			808	<i>Cf.</i> Ch. XL, r. 4(4).
763 }	<i>Cf.</i> Ch. XXXV, r. 13.	786 to 788 }	Omitted.	809	Omitted.
764 }				810	Ch. XXXVI, r. 45.
765	<i>Cf.</i> Ch. XXXV, r. 14.	789	Ch. XXXVI, r. 35.	811	<i>Cf.</i> Ch. XXXVI, r. 46.
766	<i>Cf.</i> Ch. XXXV, r. 21.	790	Ch. XXXVI, r. 34.	812	<i>Cf.</i> Ch. XXXVI, r. 48.
767	<i>Cf.</i> Ch. XXXV, r. 20.	791	Ch. XXXVI, r. 53.	813	<i>Cf.</i> Ch. XXXVI, r. 49.
768	Repealed rule.	792	Ch. XXVI, r. 54.	814	<i>Cf.</i> Ch. XXXVI, r. 50.
769	See Ch. XXXV, r. 12.	793	<i>Cf.</i> Ch. XXXVI, r. 100.	815	Ch. XXXVI, r. 51.
770	<i>Cf.</i> Ch. XXXV, r. 36.	794	<i>Cf.</i> Ch. XXXVI, r. 102.	816	Ch. XXXVI, r. 52.
771	<i>Cf.</i> Ch. XXXV, r. 35.	795	<i>Cf.</i> Ch. XXXVI, r. 101.	817	<i>Cf.</i> Ch. XXXVI, r. 91.
772	<i>Cf.</i> Ch. XXXVI, rr. 1 & 2.	796	<i>Cf.</i> Ch. XXXVI, r. 105.	818	<i>Cf.</i> Admiralty Rule 49.
773	<i>Cf.</i> Ch. XXXVI, r. 13.	797	Ch. XXXVI, r. 106.	819	Omitted.
774 }	Omitted.	798	<i>Cf.</i> Ch. XXXVI, r. 108.	820	<i>Cf.</i> Ch. XXXVI, r. 9.
775 }				821	<i>Cf.</i> Ch. XXXVI, r. 44.
776	Omitted, but see Ch. XXXVI, rr. 23 & 66.				

LIST

Of Matters and Applications, *other than* those set out in Chapter VI, r. 11, prescribed by the Rules to be dealt with or made in Chambers—those which cannot be taken by the Registrar or Master and must be dealt with by a Judge being marked *.

(See note to Rule 11 of Chapter VI, *ante*, p. 144, and Chapter VI, r. 12, as to power of the Registrar or Master in chambers. By sub-clause (a) of that Rule the Registrar or Master cannot take *contested* applications except with consent.)

- * 1. Application in matters of Attorneys and Articled Clerks. Ch. I, r. 67.
- 2. „ for change of attorney. Ch. II, r. 8.
- 3. „ to withdraw from the conduct of suit, etc. Ch. II, r. 9.
- * 4. „ as to search, copy or inspection refused or granted by the Registrar. Ch. IV, rr. 9 and 10.
- 5. „ for production of documents elsewhere than in the High Court. Ch. IV, r. 16.
- * 6. „ for appointment of Special Translator. Ch. IV, r. 25.
- 7. „ for compulsory lodgment of documents for translation. Ch. IV, r. 35.
- * 8. „ to enforce payment of costs under a direction of the Registrar or Master. Ch. VI, r. 22.
- 9. „ for fresh summons. Ch. VIII, r. 9.
- * 10. „ for appearance after suit has been set down in the Peremptory List of undefended suits and before the hearing. Ch. VIII, r. 19.
- 11. „ for substituted service of summons. Ch. VIII, r. 23.
- 12. „ to transfer suit to Peremptory List of undefended suits. Ch. IX, r. 3.
- 13. „ to have suits heard *ex parte* against defendant in default. Ch. IX, r. 4.
- 14. „ to compel plaintiff to file Written Statement. Ch. IX, r. 5.
- 15. „ to file voluntary statement or set-off after suit has been set down in the Peremptory List of undefended suits. Ch. IX, r. 6.
- 16. „ that a suit not admitted as a Commercial suit may be so marked. Ch. X, r. 4.
- 17. „ for direction to treat liquidated claim or Commercial suit as ordinary suit. Ch. X, r. 5.
- 18. „ that a suit to be entered in the Prospective List be *not* placed at the bottom of such List. Ch. X, r. 7, para. 3.
- 19. „ to remove suit from Prospective List (to be made to the Registrar). Ch. X, r. 8.

- * 20. Application to replace a suit in the Prospective List *without re-quisition* (before Court or Judge). Ch. X, r. 12.
- 21. „ to set down suit for consent decree. Ch. X, r. 26.
- * 22. „ that a stayed suit be set down in the Peremptory List before the prescribed time. Ch. X, r. 32.
- * 23. Disposal of suits for want of prosecution. Ch. X, r. 36.
- 24. Application for interrogatories. Ch. XI, r. 1.
- 25. „ for leave to sue, etc., as a pauper. Ch. XII, r. 11.
- 26. Notice for investigation of pauperism. Ch. XII, r. 12.
- * 27. Application for leave to compromise or discontinue pauper suit or proceeding (before Court or Judge). Ch. XII, r. 17.
- * 28. Disposal of matters on originating summons. Ch. XIII.
- * 29. Application for striking out scandalous matters from affidavit. Ch. XV, r. 10.
- * 30. Making of consent decrees. Ch. XVI, r. 7.
- 31. Notices under section 145 and under O. XXI, rr. 2, 34(2) and 37 of the Code (returnable before the Judge). Those under O. XXI, rr. 16 and 22 of the Code (returnable before the Registrar or Master). Ch. XVII, r. 11.
- 32. Application to extend returnable date of Warrants. Ch. XVII, r. 18.
- * 33. „ for Receiver in execution of decree. Ch. XVII, r. 27.
- 34. „ for sale in execution. Ch. XVII, r. 29.
- * 35. „ for payment in execution. Ch. XVII, r. 37.
- * 36. „ for rateable distribution. Ch. XVII, r. 38.
- * 37. Disposal of application for execution not proceeded with for 12 months. Ch. XVII, r. 43.
- * 38. Garnishee notice (returnable before the Judge). Ch. XVIII, r. 1.
- * 39. Enquiry as to unsoundness of mind of persons not so adjudged. Ch. XIX, r. 3.
- * 40. Passing of Receiver's or Manager's accounts, etc. (by Court or Judge). Ch. XXI, rr. 13 to 20.
- 41. Application for the issue of a commission. Ch. XXII, r. 1.
- 42. „ under section 12 of the Indian Arbitration Act. Ch. XXIII, r. 5.
- * 43. „ for Court's opinion on special case (Arbitration Act). Ch. XXIII, rr. 5 and 11.
- * 44. „ for directions in case of doubt as to construction of money decrees and orders (to Court or Judge). Ch. XXIV, r. 7.
- * 45. „ that office copy of order directing reference may be received in the Account Department after time. Ch. XXVI, r. 5.
- * 46. „ that suit be dismissed, etc., for want of prosecution of a Reference. Ch. XXVI, r. 8.
- * 47. „ for postponement of Reference under Ch. XXVI, r. 14(a) (to Court or Judge).
- * 48. „ for recall of Reference (to Court or Judge). Ch. XXVI, r. 15.

LIST OF PRESCRIBED CHAMBER MATTERS.

- * 49. Application to enforce directions of an officer. Ch. XXVI, r. 23.
- * 50. " for order to enforce directions of an officer as to payment of costs or fees in a Reference. Ch. XXVI, r. 29.
- * 51. Hearing of application against Officer's order excluding Managing or Articled Clerk from appearing and acting in a Reference. Ch. XXVI, r. 30.
- * 52. Application for an order requiring Officer to report specially. Ch. XXVI, r. 51.
- * 53. Application for further directions where Reference is struck out. Ch. XXVI, r. 55.
- * 54. " for special leave to file claims after time fixed in Administration Suits. Ch. XXVI, r. 76.
- * 55. " for further time to give notice to discharge or vary a certificate or report. Ch. XXVI, r. 80.
- * 56. " as to carriage of proceedings relating to Registrar's Sale (to Court or Judge). Ch. XXVII, r. 4.
- * 57. " to confirm acceptance by Registrar of bid below reserved price. Ch. XXVII, rr. 21, 29.
- * 58. " by purchaser for confirmation of Certificate of result of sale before effluxion of time. Ch. XXVII, r. 32.
- * 59. " to compel delivery of abstract. Ch. XXVII, r. 33.
- * 60. " for reference as to title. Ch. XXVII, r. 35.
- * 61. " by purchaser to pay balance of purchase money into Court. Ch. XXVII, r. 38.
- * 62. " against defaulting purchaser. Ch. XXVII, r. 39.
- * 63. " regarding disposal of purchase money paid into Court. Ch. XXVII, r. 42.
- * 64. " for certificate of sale. Ch. XXVII, r. 45.
- * 65. " for the return to the purchaser of Transfer sent for approval. Ch. XXVII, r. 48.
- * 66. " to procure execution of Transfer by Registrar. Ch. XXVII, r. 51.
- * 67. " for leave to bid at Registrar's Sale. Ch. XXVII, r. 54.
- * 68. " to confirm certificate of result of Sale where party to the suit is accepted as the purchaser without leave, to bid. Ch. XXVII, r. 56.
- * 69. " for substitution of name as purchaser. Ch. XXVII, r. 58.
- * 70. " for appointment of guardian under Act VIII of 1890. Ch. XXX, rr. 2 and 7.
- * 71. " for the discharge or removal of a guardian. Ch. XXX, r. 12.
- 72. " to inspect and take copies of accounts of minor's guardian. Ch. XXX, r. 14.
- * 73. Presentation and hearing of applications and proceedings in company matters. Ch. XXXI. (See Rule 2 as to power to refer to Court).
- * 74. Application to enlarge time in appeal matters when the Appellate Court is not sitting. Ch. XXXII, r. 22(a).

75. Application to appeal as a pauper (to be presented to the Registrar). Ch. XXXII, r. 24.
- * 76. „ for transmission of original documents to Privy Council. Ch. XXXIII, r. 11.
- * 77. „ to discharge caveat for not filing affidavit in support thereof. Ch. XXXV, r. 27.
- * 78. „ that testamentary proceedings be numbered as a suit. Ch. XXXV, r. 28.
- * 79. „ to tax bill returned by the Taxing Officer. Ch. XXXVI, r. 27.
- * 80. „ to review Taxing Officer's taxation. Ch. XXXVI, r. 72.
- * 81. „ to amend clerical errors, etc., in pleadings. Ch. XXXVIII, r. 57.
- * 82. „ for order to prevent return of documents in ordinary course. Ch. XXXVIII, r. 61.
- * 83. „ for order against client for payment of taxed costs. Ch. XXXVIII, r. 67.
- * 84. „ to summon assessors. Ch. XXXIX, r. 4.

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